

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Bamberg County

Honorable Edgar W. Dickson, Circuit Court Judge

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S.C. SUPREME COURT

JUAN M. NIMMONS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2017-000829

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APPENDIX

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<sup>1</sup> No conditional order of dismissal was ever filed in this case.

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## CLOSING ARGUMENT ON BEHALF OF THE STATE

1 to look at someone they love laying there in their  
2 blood?

3 Well, it makes sense. Well, he goes back  
4 and gets Miss Nimmons and they go back over there and  
5 they uncover her and find her and then they go back  
6 in and have one of their kids call 911.

7 And then the law comes. I think Mr. Bell  
8 said he got there around eight o'clock. Well,  
9 wouldn't that be when the crowd starts forming?  
10 Wouldn't that be when people are walking in the yard?  
11 Wouldn't that be when the kids are coming up after  
12 the body's found, about eight o'clock?

13 Well, somehow some little girls were on the  
14 street around quarter to seven and they already knew  
15 she was dead because they were talking about it in  
16 front of Mr. Nimmons.

17 You heard his testimony. They knew she was  
18 dead an hour and a half before the police got there,  
19 if you believe his story.

20 His foot's in the trap, folks. He going to  
21 say anything he's got to say.

22 What else does Mrs. Zola tell us lying  
23 there on that couch? I think if you read the  
24 statements that Mr. Nimmons gave to law enforcement  
25 while he was in this daze, he says his mama was a

## CLOSING ARGUMENT ON BEHALF OF THE STATE

1 light sleeper.

2 So he was going to knock her out to take  
3 her money. Well, laying there on the couch with your  
4 legs crossed and you're a light sleeper, wouldn't you  
5 think at least you get your legs uncrossed if you  
6 heard someone coming in the door.

7 If there were somebody breaking in the  
8 house, trying to rob you, wouldn't you sit up?  
9 Wouldn't you move your legs? Wouldn't you do  
10 something?

11 What's common sense? What would you do if  
12 someone had broken in? But if someone you knew,  
13 someone you lived with, walked into the kitchen and  
14 opened the drawer and came walking back in the living  
15 room, is there a chance you might not get up, might  
16 not look up, might not pay any attention?

17 I say that makes more sense. Because, as  
18 Doctor McConnell said, she didn't move after she was  
19 hit. So, she tells us a lot. She's relaxed. She's  
20 laying on the couch. Maybe they've had an argument,  
21 got her feet crossed, laying there resting.

22 And a blow sends her out of this world and  
23 she doesn't move an inch. Doesn't that sound like  
24 someone that was in the house that knew her, who she  
25 knew and trusted and wasn't worried about?

## CLOSING ARGUMENT ON BEHALF OF THE STATE

1           Even if it was four o'clock in the morning,  
2 wouldn't she have moved her feet if somebody was  
3 jerking at the door if she's a light sleeper?

4           Now, Darryl admits he has a drug problem.  
5 And we got Mr. Nimmons over here in a whole lot of  
6 trouble. And the Judge will tell you, when you're  
7 deciding who's telling the truth on that chair right  
8 there, you can think of a lot of things but one of  
9 the things is, who's got a reason to lie, who's got  
10 something to lose, who's got a reason.

11           Well, Darryl got up there and he told you  
12 his story. He told you some things that went on that  
13 night and some of them didn't help Mr. Nimmons at  
14 all.

15           And today Mr. Nimmons got on the stand and  
16 Mr. Darryl is about the worst person in this  
17 courtroom according to him. His aunt's just been  
18 murdered and he's hiding out Mr. Nimmons, according  
19 to Mr. Nimmons, and he's watching the police for him,  
20 telling them what to do, telling them where to go,  
21 giving him a place to say.

22           And then the next day or next couple days  
23 he says, well, cm'on, I'll hide you some more. I'll  
24 go break down the door of a house and put you in it.

25           There he goes again. I didn't do anything.

## CLOSING ARGUMENT ON BEHALF OF THE STATE

1 It was him. I didn't do anything. I don't remember.  
2 I didn't do anything. They threatened me. I didn't  
3 do anything. I was confused.

4 He's dodging again, trying to dump it all  
5 off on Darryl. What doesn't he want Darryl to say?  
6 Well, Darryl said that Juan came over toward his  
7 house and towards Sandra Jordan's house three times  
8 that night and left three times that night.

9 And what else did he say? And I think this  
10 is very important. He said that the last time Juan  
11 was down at the house they were in the yard and they  
12 were doing drugs.

13 And what did Juan do that Mr. Darryl  
14 remembers was kind of strange? He said about four  
15 times Juan would walk down to Libby's, a block away,  
16 and look up toward his house. Middle of the night.

17 Now what does that mean? What does our  
18 common sense tell us? He wants to know if someone's  
19 found out yet. He's checking to see if he needs to  
20 get hid. He's already planning how to take care of  
21 this situation.

22 What did Mr. Yon say? Well, you know, the  
23 Judge is also going to tell you can believe some, you  
24 can believe all, or you can believe none, but I  
25 believe Mr. Yon told you some of the story. I don't

## CLOSING ARGUMENT ON BEHALF OF THE STATE

1 think he told you all about the drug involvement, but  
2 Mr. Yon said at one point Juan got in the car with  
3 him and had him drive him across town and let him out  
4 beside the road saying he had to go to work.

5 And then a little later on he drove back by  
6 Sandra Jordan's house, a block and a half from Juan's  
7 house and then he was back. Juan didn't say anything  
8 about that.

9 What else was Juan doing that night? He  
10 was all over the neighborhood. He went to Booker  
11 T's. He went to Darryl's a couple times. He went to  
12 the store towards the morning. He saw Elliott Adams,  
13 he saw all these people.

14 I tell you, I submit to you what I think he  
15 was doing that night was building himself a trail.  
16 He was worried.

17 Number one thing, mama's car. So what did  
18 he do? Got rid of the car. Let other people see him  
19 getting rid of the car because some people in some  
20 questionable circles with some questionable history,  
21 maybe I can blame it on them.

22 Then he goes -- he's moving the whole  
23 night. He didn't just go one place and party, he  
24 kept moving the whole night so lots of people would  
25 see him at lots of different times and get them all

## CLOSING ARGUMENT ON BEHALF OF THE STATE

1 confused.

2           They're all people doing drugs, so maybe  
3 they won't remember I was gone for a little while.  
4 Maybe they won't remember, like Darryl did, that he  
5 changed his clothes before he came back the last  
6 time. Maybe they won't remember.

7           And this is a puzzle we're putting  
8 together, like Mr. Koger said, and we're not going to  
9 fill in every piece. And the law doesn't require us  
10 to fill in every piece, but I think enough of the  
11 puzzle is coming together that we can tell what the  
12 picture is going to be.

13           And we can tell the truth about what  
14 happened that night. I don't know who Beverly saw on  
15 the porch that morning. Maybe it was Juan, maybe he  
16 had a hat, maybe he had that blanket that he had  
17 covered his mama up with and it looked like a skirt,  
18 but maybe he had gotten one of those fine people he  
19 was hanging out with that night to go back and check  
20 because he sure was worried about what was going on  
21 at that house after he left that third time.

22           But I want you to remember, Beverly said  
23 the car was already gone when she woke up at four in  
24 the morning. Juan had already killed his mother,  
25 already gotten in her bosom and taken that purse,

## CLOSING ARGUMENT ON BEHALF OF THE STATE

1 already gotten her keys and already taken off in the  
2 car.

3 By four A.M. he was building his trail  
4 across town, getting carried away, and that could  
5 have been someone he sent back to just make sure or  
6 it could have him coming back to check, could have  
7 been him coming back to clean up, to cover up.

8 We don't know, and we may never know, but  
9 don't let that get you sidetracked. Don't let that  
10 get you hung up because we know enough of the rest of  
11 the puzzle.

12 Lee Hutto testified that check came into  
13 the bank after two o'clock. Even though it says the  
14 7th, it was the 6th. You remember he said the banks  
15 roll over their days and she got her paycheck that  
16 afternoon and went and got cash for it is what his  
17 testimony was.

18 I think if you look at the numbers on it,  
19 you'll have it back there, it was close to five  
20 o'clock. She went home, picked up some papers on the  
21 way, went into her trailer. Beverly came over. They  
22 talked. She had a little bit to drink, read the  
23 paper, hung out for a while.

24 At some point Juan came home, this son of  
25 hers, this drug addict of hers. And we don't know

## CLOSING ARGUMENT ON BEHALF OF THE STATE

1 what happened. As I said before, she had given him  
2 money before. She had supported him before. She'd  
3 done all these things for this grown man.

4 And I believe he testified her family said,  
5 put him out on the street, make him grow up. She  
6 wouldn't. She loved her son. Worked hard, gave  
7 everything to the son, didn't have anything. Here he  
8 was, a grown man, worked good jobs yet he'd take her  
9 money for crack.

10 I'm allowed to tell you what I think the  
11 evidence showed that night. I believe they had an  
12 argument. I believe she finally said no, no more  
13 crack. And she laid down on that couch after a hard  
14 week's work, had a little bit to drink, crossed her  
15 legs watching TV.

16 That's what Beverly said. She left her  
17 watching TV, laying on the couch.

18 And this person that's on crack cocaine,  
19 been on it for several years, got to needing some  
20 more, got in a rage, went in that kitchen drawer, got  
21 that hammer and walked up and took his mama out of  
22 this world.

23 Maybe he stepped back, realized what he  
24 did. Went to the kitchen, tried to rinse it off.  
25 Couldn't get it all off. Realized, hey, my shirt.

## CLOSING ARGUMENT ON BEHALF OF THE STATE

1     Went back down the hall. Went in the laundry room,  
2     got the rag, wiped off the hammer, wiped off some  
3     more, threw his shirt in the laundry, put on another  
4     shirt.

5             I don't know when he reached in her bosom  
6     and got that money, but at some point the money got  
7     gone. And he left with her keys and her money.

8             Where did he go? Left his mama that he  
9     loved, that he was closer to than anybody in the  
10    world, covered her up, went back out to the corner,  
11    started doping again.

12            It's a sad story, but the person that did  
13    this thing cannot get away with it.

14            Now as the jury you have some power. You  
15    know, a few months ago we all voted. We got a chance  
16    to go down and cast a vote and make a voice for our  
17    community.

18            Well, that's an important thing but as  
19    you're sitting in those chairs today you also make  
20    decisions about your community. What kind of things  
21    are you going to let go on in your community?

22            I'd ask you to remember that when you're  
23    back in that room. Are we going to allow this in  
24    Bamberg County?

25            I ask you to remember the things that

## CLOSING ARGUMENT ON BEHALF OF THE STATE

1 you've heard, the officers testified to you what they  
2 did that morning.

3 Mr. Folk typed up a statement. First  
4 Mr. Nimmons said, I didn't tell him anything. He  
5 just came up with all of that. He did all the  
6 talking. I didn't give him any information. He  
7 typed it up. I was in a daze. I didn't really know  
8 my rights that morning and I signed it but I didn't  
9 know what I was doing.

10 What's that all about? Here he is a  
11 trained security guard, a trained jailer, worked with  
12 law enforcement every day at his job, but he was  
13 upset at that time and he didn't know what his rights  
14 were.

15 And he didn't tell that officer anything.  
16 He typed the whole thing out, is what he told Mr.  
17 Koger. Well, then, when I questioned him, there was  
18 information in those statements.

19 And you read them back there, please read  
20 them. If you want to watch that video, please, watch  
21 it. I wish you would.

22 There is information in those statements  
23 that nobody but the person that killed Zola Robinson  
24 could have gotten or could have known. Who knew?  
25 You read it. Who knew where the hammer was kept?

## CLOSING ARGUMENT ON BEHALF OF THE STATE

1           In one of his statements he said, I got the  
2 hammer out of the kitchen drawer. Who knew she was  
3 laying on the couch but the killer. It's in his  
4 statements.

5           And he hasn't been back to the house, he  
6 hadn't seen the crime scene. Who knew the hammer was  
7 thrown out in the back yard but the killer. It's in  
8 his statement. Read them.

9           And the parts he can't remember are the  
10 parts he doesn't want you to think about. No one  
11 said this job was going to be easy for you. No one  
12 said it was going to be any fun.

13           And I'm sorry you have to sit here and hear  
14 about someone hitting their mama in the head thirteen  
15 times with a hammer, I am.

16           But you're here to do a job. You're not  
17 here to reward anybody. You're not here to challenge  
18 anybody because you're here to find the truth and  
19 when you do that you got nobody to answer to, you've  
20 done your job, you've done your duty.

21           I would ask you to do that duty, go back  
22 there and don't rush it. It is an important thing.  
23 It's a man's freedom but Miss Zola Robinson is also  
24 having her day in court today and so is her family.  
25 And they deserve justice.

## CLOSING ARGUMENT ON BEHALF OF THE STATE

1           So I ask you to go back in that room after  
2 the Judge tells you the law and do what you got to  
3 do; take this man off our streets, find him guilty.

4           Thank you.

5           THE COURT: Mr. Foreman and members of  
6 the jury.

7           The State of South Carolina charges the  
8 Defendant, one Juan M. Nimmons with the offenses  
9 of murder and armed robbery.

10          These indictments have been read to you so I  
11 will not repeat the allegations contained in  
12 them. You will have them in your jury room  
13 during your deliberations.

14          Now, to these indictments the Defendant has  
15 entered pleas of not guilty which places upon the  
16 State the burden of proving the Defendant guilty.

17          A person charged with committing a criminal  
18 offense in South Carolina is never required to  
19 prove himself innocent. I charge you that it is  
20 a vital, important rule of the laws of evidence  
21 that the Defendant in a criminal trial, no matter  
22 how great or serious may be the offense with  
23 which he is charged, must always be presumed  
24 innocent until his guilt has been proven beyond a  
25 reasonable doubt.

## JUDGE'S CHARGE TO THE JURY

1        This presumption of innocence remains with  
2        the Defendant at all times from the moment of his  
3        appearance in this courtroom throughout the trial  
4        and until the jury has, upon the testimony and  
5        evidence presented, reached a verdict of guilty  
6        beyond a reasonable doubt.

7        For it is the solemn duty of you, the jury,  
8        if not clearly convinced of his guilt beyond a  
9        reasonable doubt to the contrary to acquit the  
10       Defendant.

11       So, the burden of proof is upon the State to  
12       establish by evidence to your satisfaction the  
13       guilt beyond a reasonable doubt of this Defendant  
14       here on trial for the crimes of murder and armed  
15       robbery.

16       Now, what is a reasonable doubt. A  
17       reasonable doubt is the kind of doubt that would  
18       cause a reasonable person to hesitate to act.

19       Now, the State has the burden of proving the  
20       Defendant guilty beyond a reasonable doubt. Some  
21       of you may have served as jurors in civil cases  
22       where you were told that it is only necessary to  
23       prove that a fact is more likely true than not  
24       true.

25       In criminal cases the State's proof must be

## JUDGE'S CHARGE TO THE JURY

1 more powerful than that. It must be beyond a  
2 reasonable doubt. Proof beyond a reasonable  
3 doubt is proof that leaves you firmly convinced  
4 of the Defendant's guilt.

5 Now, there are very few things in this world  
6 that we know with absolute certainty. And in  
7 criminal cases the law does not require proof  
8 that overcomes every possible doubt.

9 If based on your consideration of the  
10 evidence you are firmly convinced that the  
11 Defendant is guilty of the crime charged, you  
12 must find him guilty.

13 If, on the other hand, you think that there  
14 is a real possibility that he is not guilty, then  
15 you must give him the benefit of the doubt and  
16 find him not guilty.

17 Now, ladies and gentlemen, there are two  
18 types of evidence which are generally presented  
19 during a trial; direct evidence and  
20 circumstantial evidence.

21 Direct evidence is the testimony of a person  
22 who asserts or claims to have actual knowledge of  
23 a fact, such as an eyewitness. Circumstantial  
24 evidence is proof of a chain of facts and  
25 circumstances indicating the existence of a fact.

## JUDGE'S CHARGE TO THE JURY

1           The law makes absolutely no distinction  
2 between the weight or value to be given either  
3 direct or circumstantial evidence nor is a  
4 greater degree of certainty required of  
5 circumstantial evidence than that of direct  
6 evidence.

7           You should weigh all the evidence in the  
8 case and after weighing all of the evidence if  
9 you are not, if you are not convinced of the  
10 guilt of the Defendant beyond a reasonable doubt  
11 you must find the Defendant not guilty.

12           Conversely, if you are convinced of the  
13 guilt of the Defendant beyond a reasonable doubt,  
14 then you must find him guilty.

15           Now, Mr. Foreman, and members of the jury,  
16 under the Constitution and laws of the State of  
17 South Carolina you are the finders of the facts  
18 in this case. I do not have the right to pass  
19 upon the facts or even to express any opinion I  
20 might have as to them nor may I intimate in any  
21 way what I may think about the guilt or innocence  
22 of the Defendant.

23           Are you also the judges, the sole judges of  
24 the credibility, the believability of the  
25 witnesses who have testified in this case.

## JUDGE'S CHARGE TO THE JURY

1 In passing upon their credibility you may  
2 take into consideration many things such as the  
3 following; the demeanor or manner of testifying,  
4 whether the witness had reason to be biased or  
5 prejudiced, whether a witness's testimony was  
6 contradicted on the one hand or supported and  
7 corroborated on the other hand.

8 Now you certainly do not determine this  
9 credibility or believability by counting the  
10 number of witnesses presented by either side.

11 You may believe a small portion of a  
12 witness's testimony and disregard the larger or  
13 vice versa. You may believe one witness against  
14 many or many against one.

15 All of these things you will consider,  
16 bearing in mind that you should give the  
17 Defendant the benefit of a reasonable doubt.

18 Now the rules of evidence ordinarily do not  
19 permit witnesses to testify as to their opinions  
20 or conclusions. An exception, however, to this  
21 rule does exist as to those whom we call expert  
22 witnesses.

23 Expert witnesses are witnesses who by  
24 education and experience have become expert in  
25 some art, science, profession or calling.

## JUDGE'S CHARGE TO THE JURY

1           These witnesses may state their opinions as  
2 to relevant and material matter in which they  
3 profess to be an expert and may also state their  
4 reasons for the opinion.

5           Now, you should consider expert opinion  
6 received in evidence in this case and give it  
7 such weight as you may think it deserves.

8           If you should decide that the opinion of an  
9 expert witness is not based upon sufficient  
10 education and experience or if you should  
11 conclude that the reasons given in support of the  
12 opinion are not sound or if you feel that it is  
13 outweighed by other evidence, you may disregard  
14 the opinion entirely.

15           Now, I charge you that a person who has a  
16 past record is competent to testify during a  
17 trial. A past record does not affect the ability  
18 of that witness to testify and is allowed to be  
19 introduced and considered only on the issue of  
20 credibility.

21           The past record may be considered by you, if  
22 you should so decide, in determining their  
23 credibility or believability.

24           Remember, as I have instructed you, you are  
25 the sole judges of the facts in this case and

## JUDGE'S CHARGE TO THE JURY

1 also the credibility of any and all witnesses.

2 Now, I instruct you with reference to  
3 evidence of a prior record of a Defendant of  
4 other crimes that this evidence was admitted for  
5 a limited purpose. I instruct you now that you  
6 must not consider such evidence for any reason  
7 except for the purpose for which it was admitted.

8 And this evidence was admitted and may be  
9 considered by you, the jury, if you conclude it  
10 true only for the purpose of evaluating the  
11 credibility or believability of the testimony  
12 presented by the Defendant himself and for no  
13 other purpose.

14 You cannot and you must not consider a prior  
15 record of a Defendant as any evidence of his  
16 guilt of the charge for which he is now being  
17 tried.

18 You may give this evidence such weight and  
19 such value to which you should find it is  
20 entitled on the sole issue of the credibility or  
21 believability of the testimony offered by the  
22 Defendant himself but not as any evidence of  
23 guilt of the crime for which he is now being  
24 tried.

25 Now, ladies and gentlemen, by the same

## JUDGE'S CHARGE TO THE JURY

1 Constitution and law which makes you the finders  
2 of the facts and the evidence as I have discussed  
3 with you, I am as the Judge made the sole and the  
4 only instructor in the law.

5 You must accept as correct the law which I  
6 charge and apply it to the evidence as you find  
7 it and reach your verdict.

8 And, finally, I charge you in this regard  
9 that you should not be concerned about what you  
10 think the law ought to be but rather what I  
11 charge you the law to be.

12 Now, while the Court generally determines  
13 the admissibility of evidence, I instruct you  
14 that it is -- regarding the alleged statements by  
15 the Defendant, that you, ladies and gentlemen of  
16 the jury, make the ultimate determination of  
17 whether or not the Defendant made such  
18 statements.

19 And if he did make them, whether he was  
20 warned of his constitutional rights and whether  
21 he knowingly and intelligently waived his  
22 constitutional rights, and whether it was made by  
23 the Defendant voluntarily and of his own free  
24 will and finally just what weight, if any, should  
25 be given thereto.

## JUDGE'S CHARGE TO THE JURY

1           Mr. Bailiff.

2           THE BAILIFF: Yes, sir.

3           (Off-the-record discussion.)

4           THE COURT: I charge you that you must  
5 determine if the statements were the product of  
6 an essentially free and unconstrained choice by  
7 its maker.

8           And if you determine that it was, and the  
9 burden is upon the State to prove this fact, as  
10 all other facts, beyond a reasonable doubt, then  
11 you may give it such further consideration as you  
12 deem proper.

13           If you determine that the alleged statement  
14 was not the free and voluntary will or expression  
15 of the Defendant, then you should not consider it  
16 at all.

17           Now, in determining whether a Defendant's  
18 will was overcome in obtaining a statement, you  
19 should consider both the characteristics of the  
20 accused and the details of the interrogation  
21 which is often referred to as the totality of the  
22 circumstances.

23           Some of the factors you may consider are as  
24 follows: The education or lack thereof of the  
25 accused, his mental ability or capacity, his

## JUDGE'S CHARGE TO THE JURY

1 background and environment, the advice or lack  
2 thereof to the accused of his constitutional  
3 rights, including but not limited to the  
4 procedural safeguards known as the Miranda  
5 warnings concerning the right to remain silent,  
6 that a statement could be used against him in a  
7 court of law and the right to have a lawyer  
8 present and if indigent, that is, he could not  
9 afford a lawyer, then a lawyer would be appointed  
10 to represent him, and he could stop the statement  
11 at any time.

12 Other factors to be considered are the place  
13 and length of detention and the nature of the  
14 questions.

15 Now, you, the jury, must carefully  
16 scrutinize all of the surrounding circumstances  
17 before you give any weight to the alleged  
18 statements. You must be satisfied beyond a  
19 reasonable doubt that the statement was made by  
20 the accused, uninfluenced by promise of reward,  
21 threat of injury, or diminution of his rights.

22 Now, as you are well aware as I have  
23 indicated to you, the State has charged in one of  
24 its indictments that the Defendant is guilty of  
25 the crime of murder, so it becomes necessary for

## JUDGE'S CHARGE TO THE JURY

1 me to instruct you as to the law of that crime in  
2 this State.

3 What is murder by definition? Well, murder  
4 may be defined as the willful, felonious killing  
5 of a human being with malice aforethought, that  
6 malice being express malice or inferred or  
7 implied malice.

8 Now, what is malice? Malice is defined in  
9 the law of homicide as a term of art. This is a  
10 technical term importing wickedness and excluding  
11 just cause or legal excuse. It is something  
12 which springs from wickedness, from depravity,  
13 from a depraved spirit, from a heart devoid of  
14 social duty and fatally bent on mischief.

15 The words express or inferred malice do not  
16 mean different kinds of malice but merely the  
17 manner in which the only kind of malice known in  
18 the law may be shown to exist. That is to say,  
19 either by direct evidence or by inference.

20 Malice may be expressed where, as where  
21 previous threats of vengeance or lying in wait or  
22 other circumstances show directly that an intent  
23 to kill was entertained.

24 The jury may also conclude by deductive  
25 reason that under certain circumstances malice

## JUDGE'S CHARGE TO THE JURY

1 may arise even though there is no express or  
2 direct evidence of an intent to kill.

3 Malice may be inferred where, though no  
4 expressed intent to kill is proved by direct  
5 evidence, it may be inferred from the facts and  
6 circumstances which are proved.

7 Malice may be inferred from the willful,  
8 deliberate and intentional doing of an unlawful  
9 act without just cause or legal excuse. In other  
10 words, in its general signification malice means  
11 the doing of a wrongful act intentionally without  
12 justification or legal excuse.

13 But even if the facts proved are sufficient  
14 to raise an inference of malice, this inference  
15 would simply be an evidentiary packet fact be  
16 taken into consideration by you, the jury, along  
17 with all the other evidence in this case.

18 And you may give it such weight as you  
19 determine it should receive as to whether or not  
20 malice has been proved beyond a reasonable doubt.

21 Furthermore, even where there is an absence  
22 of specific fixed and deliberate intent to take  
23 the life of a particular person, or that of any  
24 person, the law says that if it is proved beyond  
25 a reasonable doubt that one intentionally killed

## JUDGE'S CHARGE TO THE JURY

1 another with a deadly weapon or a dangerous  
2 instrumentality, an implication of malice may  
3 arise.

4 The use of a deadly weapon permits you to  
5 infer malice but it does not require you to infer  
6 malice. If facts are proved beyond a reasonable  
7 doubt sufficient to raise an inference of malice  
8 to your satisfaction, once again, this would  
9 simply be an evidentiary fact to be taken into  
10 consideration by you, the jury, along with the  
11 other evidence in the case and you may give it  
12 such weight as you find it should receive.

13 You, as jurors, are free to accept or reject  
14 this permissive inference depending upon your  
15 view of the facts.

16 In other words, if such conduct results  
17 directly in the death of another and if such  
18 conduct was so culpable and inexcusable, so  
19 aggravated and grossly reckless as to show an  
20 active, intentional disregard to the consequences  
21 of human life thus denoting a malignant spirit, a  
22 heart devoid of social duty and fatally bent on  
23 mischief, an implication of malice may arise.

24 Furthermore, it is not just carelessness,  
25 not mere recklessness or a passive indifference

## JUDGE'S CHARGE TO THE JURY

1 to the safety of others, this conduct when it  
2 shows a deliberate and intentional design to use  
3 or so employ or handle a deadly weapon or a  
4 dangerous instrumentality so as to endanger the  
5 life of another or others without just cause or  
6 excuse, may be sufficient to raise this  
7 implication.

8 However, it is for you, the jury, to decide  
9 beyond a reasonable doubt whether upon all the  
10 facts and circumstances of this case the  
11 Defendant's alleged use of a deadly weapon  
12 demonstrated an intentional disregard for human  
13 life, that malice may be implied or inferred from  
14 the use of that deadly weapon. And it is for  
15 you, the jury, to decide what weight, if any,  
16 should be given to this fact.

17 And it will be observed, ladies and  
18 gentlemen, that the malice must be aforethought.  
19 And while the law does not require that malice  
20 shall exist for any particular length of time  
21 before the commission of the act, it must be  
22 aforethought.

23 There must be a combination of the previous  
24 evil intent and the act producing the fatal  
25 result.

## JUDGE'S CHARGE TO THE JURY

1 Malice is a word suggesting wickedness,  
2 hatred, a determination to do what one knows to  
3 be wrong without just cause or excuse or legal  
4 provocation.

5 Malice need not be in the mind of the one  
6 doing the killing any particular length of time  
7 before the act of killing in order to render the  
8 killing murder.

9 If it is present in the mind of the one  
10 doing the killing any length of time before the  
11 act, then its presence would be sufficient to  
12 render the killing murder.

13 Malice is said to be express where there is  
14 manifested a violent, deliberate intention  
15 unlawfully to take away the life of another human  
16 being.

17 Malice is implied where one intentionally  
18 and deliberately does an unlawful act which he  
19 then knows to be wrong and in violation of his  
20 duty to another and where no excuse or legal  
21 provocation appears, when the circumstances  
22 attending the killing show an abandoned heart, a  
23 malignant heart fatally bent upon mischief.

24 Now if the evidence should show under what  
25 circumstances a shot was fired or a blow

## JUDGE'S CHARGE TO THE JURY

1 delivered which took the life of another, then  
2 you, the jury, would have to determine whether  
3 under such circumstances the act was malicious.

4 Now, the Defendant is also charged with  
5 armed robbery. What is armed robbery? The crime  
6 of armed robbery includes all of the elements of  
7 larceny and robbery.

8 First, I would like to explain to you what  
9 is meant by larceny and what is meant by robbery.  
10 I charge you that there are four elements which  
11 must be present and established beyond a  
12 reasonable doubt to make out the crime of  
13 larceny.

14 These four elements are as follows: One,  
15 that there was a taking; two, that the taking was  
16 of the personal property; three, that after being  
17 taken the property was carried away; and, four,  
18 that the taking and carrying away of the property  
19 was done with an intent to steal.

20 I charge you that United States currency is  
21 personal property.

22 Now, robbery includes each of the four  
23 elements I have just explained to you as larceny  
24 and in addition to these four elements two other  
25 elements are necessary to make out the crime of

## JUDGE'S CHARGE TO THE JURY

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1 robbery.

2 Those elements are, that the property must  
3 be taken from the person of another or in his or  
4 her presence, and that the taking and carrying  
5 away of the property must have been accomplished  
6 by placing the other person in fear by violence  
7 or threats of violence so as to make that person  
8 surrender the property without their consent and  
9 against their will.

10 Therefore, the crime of armed robbery  
11 includes all of the elements of larceny and  
12 robbery.

13 In order to make out the crime of armed  
14 robbery, however, an additional element must be  
15 proved; the robbery must have been committed  
16 while armed with a deadly weapon.

17 The person committing the robbery must have  
18 had and used a deadly weapon with which he  
19 obtained the possession of the property or placed  
20 the one possessing the property in fear in order  
21 to obtain the property.

22 I charge you that Section Sixteen Eleven  
23 Three Thirty of the Code of Laws of the State of  
24 South Carolina 1976 as amended provides as  
25 follows: A person convicted for the crime of

## JUDGE'S CHARGE TO THE JURY

1 robbery while armed with a pistol, derth,  
2 slingshot, metal knuckles, razor, or other deadly  
3 weapon commits armed robbery. And I charge you  
4 that a hammer is a deadly weapon within the terms  
5 of this statute.

6 Now, Mr. Foreman and ladies and gentlemen,  
7 criminal intent is a necessary element of crime  
8 that must be proven by the State beyond a  
9 reasonable doubt.

10 Criminal intent is always a matter that must  
11 be determined by the jury from the circumstances  
12 surrounding the situation.

13 There is no way to prove intent to a  
14 mathematical certainty. There is no way medical  
15 science can dissect a person's brain and  
16 determine what he had in mind.

17 So, the law says that criminal intent may be  
18 inferred from the circumstances shown to have  
19 existed. This is how the jury makes a  
20 determination whether or not the element of  
21 intent was present.

22 Criminal intent is a state of mind which  
23 operated jointly with an act in the commission of  
24 a crime. Criminal intent is a mental state, a  
25 conscious wrongdoing.

## JUDGE'S CHARGE TO THE JURY

1           So it is up to you, the jury, to determine  
2 what the Defendant intended to do, based on the  
3 circumstances shown to have existed.

4           And I tell you now that the State must prove  
5 criminal intent beyond a reasonable doubt just as  
6 the State must prove every element beyond a  
7 reasonable doubt as I have previously explained  
8 to you.

9           Now, Mr. Foreman and ladies and gentlemen, I  
10 charge you that voluntary intoxication through  
11 the use of drugs is never an excuse or a defense  
12 to a crime, regardless of whether the crime is  
13 one involving general or specific intent.

14           A person who voluntarily causes himself to  
15 become intoxicated or influenced by drugs is  
16 nevertheless responsible for his acts while in  
17 such condition.

18           If one voluntarily takes drugs and becomes  
19 intoxicated or influenced by such drugs to  
20 whatever degree and while in that condition  
21 commits an act which would be a crime if  
22 committed by a sober person, the fact of  
23 drunkenness from drugs would not relieve the  
24 intoxicated person from responsibility.

25           I further charge you that voluntary

## JUDGE'S CHARGE TO THE JURY

1 intoxication does not preclude one's ability to  
2 act with malice aforethought.

3 Now, ladies and gentlemen of the jury, you  
4 have been selected as fair and impartial jurors,  
5 sworn to impartially try and determine the facts  
6 of this case.

7 And when you comply with your oath to do so,  
8 then no one will have a right to criticize your  
9 verdict and you will have fully discharged your  
10 duty as jurors.

11 You are to decide this case from the  
12 testimony that you have heard from the lips of  
13 the sworn witnesses, along with the other  
14 evidence that's been introduced into this case.

15 I charge you that, as jurors, you must  
16 decide the issues in this proceeding without bias  
17 and without prejudice to any party.

18 You cannot allow yourself to be governed by  
19 sympathy, by prejudice, by passion, by public  
20 opinion, or any other arbitrary factor.

21 Both the State and the Defendant have the  
22 right to expect that each of you will carefully  
23 and impartially consider all of the evidence in  
24 this case and that you will follow the law as I  
25 have explained it to you.

## JUDGE'S CHARGE TO THE JURY

1           Now, ladies and gentlemen, I thank you very  
2 much for the attention that you have paid during  
3 this trial. I want to invite your continued  
4 attention as I explain to you the forms of  
5 verdict in this case.

6           And, Mr. Foreman, I want you to pay  
7 particular attention because it's going to be  
8 your responsibility to preside in the jury room  
9 and to actually write the verdicts as to these  
10 charges.

11           I hold in my hand indictment 99-GS-05-28,  
12 the State versus Juan M. Nimmons, indictment for  
13 murder.

14           Ladies and gentlemen of the jury, there are  
15 two possible verdicts that you can reach as to  
16 this indictment. Please attach no significance  
17 to the fact that I list one verdict before the  
18 other. It is simply that one verdict must be  
19 listed first.

20           The possible verdicts are; guilty or not  
21 guilty. And, Mr. Foreman and ladies and  
22 gentlemen, once you have reached a verdict to  
23 which you all twelve agree then, Mr. Foreman, you  
24 will write either the word guilty or not guilty  
25 in this space provided that is entitled verdict,

## JUDGE'S CHARGE TO THE JURY

1 sign your name as the foreperson of the Petit  
2 Jury, and date it today, which is March 10, 1999.

3 And indictment 99-GS-05-29, the State versus  
4 Juan M. Nimmons. The Defendant is charged with  
5 the crime of armed robbery.

6 Once again, there are two possible verdicts.  
7 And please do not attach any significance to the  
8 fact that I list one before the other. It is  
9 simply that one must be listed first.

10 Possible verdicts are; guilty or not guilty.  
11 And once you've reached a verdict to which you  
12 all twelve agree, Mr. Foreman, you will write the  
13 word guilty or the words not guilty in the space  
14 provided, sign your name as the foreperson of the  
15 jury, and date it today which, once again, is  
16 March 10, 1999.

17 Now you have heard me explain throughout the  
18 course of my explanation of the forms of verdict,  
19 your verdict must be unanimous. Your verdict  
20 must be the verdict of all twelve of you.

21 The word verdict comes from the Latin word  
22 veradicto which means to speak the truth. And  
23 once you've reached a verdict to which all twelve  
24 of you agree, then it will speak the truth of you  
25 collectively as well as individually.

## JUDGE'S CHARGE TO THE JURY

1           Now, Mr. Foreman and ladies and gentlemen of  
2 the jury, I'm going to be sending you to the jury  
3 room in just a moment with the instruction that  
4 you are not to begin your deliberations until I  
5 instruct you to do so.

6           And also remember that when you do begin  
7 your deliberations that your verdicts must be  
8 unanimous.

9           I'm going to check with the lawyers to see  
10 if there is any need for further instruction in  
11 this case. If it is not necessary for me to  
12 bring you back into the courtroom for further  
13 instructions, I'll send the indictments together  
14 with all the evidence that's been introduced into  
15 this case back to the jury room and you may then  
16 begin your deliberations.

17           If it is necessary for me to bring you back  
18 into the courtroom for further instructions, I  
19 will do that very quickly. So, please, be  
20 prepared for that.

21           Also, I would remind you that a videotape  
22 has been introduced into evidence in this case.  
23 If you desire to have that videotape played for  
24 you, I want you to, Mr. Foreman, to write me a  
25 note on a piece of paper that will be provided

## JUDGE'S CHARGE TO THE JURY

1 back in the jury room, that you would like to  
2 have it played. I'll then get the videotape or  
3 the VCR set up and if you would when you send  
4 that note out send the evidence out, that tape,  
5 we'll have it prepared for you to see at that  
6 time.

7 Also, Mr. Foreman and ladies and gentlemen  
8 of the jury, once you have reached a verdict to  
9 which you all twelve agree in these cases, simply  
10 knock on the door, tell the bailiffs that you've  
11 reached a verdict in the case and then we will  
12 receive you back into the courtroom.

13 If you happen to have a question during the  
14 course of your deliberations, Mr. Foreman, simply  
15 write that question out on a piece of paper, sign  
16 your name as the foreman and knock on the door,  
17 give it to the bailiff and he will see that it's  
18 delivered to me and I will address that question  
19 as I am permitted under the law of this state.

20 Once again, please remember your verdicts  
21 must be unanimous. They must be the verdict of  
22 all twelve of you. And also, do not begin your  
23 deliberations until I instruct you to do so.

24 The jury may retire. And please hold the  
25 alternates just outside the courtroom, sir.

## JUDGE'S CHARGE TO THE JURY

1 THE BAILIFF: Yes, sir.

2 THE COURT: Everyone else remain seated  
3 while they exit the courtroom, please.  
4 (Jury exits courtroom at 12:20 P.M.)

5 THE COURT: Any exceptions or additions  
6 from the State?

7 MR. GIBBONS: None from the State?

8 THE COURT: From the Defendant?

9 MR. KOGER: None from the Defendant.

10 THE COURT: All right. Gentlemen, make  
11 sure that all the exhibits are properly before  
12 the Court and you agree to those on the record.

13 We'll take a moment for you to review those  
14 with the court reporter and I'll also let you  
15 look over the indictments which I have cleaned up  
16 and removed the language on the form for the  
17 stamp on pleading guilty and so forth and waiver.  
18 (Off-the-record discussion.)

19 THE COURT: Is the State in agreement  
20 as to the exhibits?

21 MR. GIBBONS: Yes, sir.

22 THE COURT: Defense in agreement?

23 MR. KOGER: Yes, sir.

24 THE COURT: All right. You got --  
25 you've reviewed the indictments?

1 MR. KOGER: Yes, Your Honor.

2 THE COURT: All right. Gentlemen, you  
3 may take the indictments and the evidence to the  
4 jury. Tell them they may begin their  
5 deliberations.

6 I will tell the State and the defense the  
7 clerk is inquiring about whether or not they  
8 would like to order lunch in at this time and  
9 I'll let you know what their decision is.

10 Gentlemen, I've enjoyed trying the case with  
11 you. In case I don't get to tell you at the end,  
12 I think both of you have done a very fine job in  
13 representing the State and the defense and I've  
14 really enjoyed trying the case with you.

15 MR. GIBBONS: Thank you, Your Honor.

16 MR. KOGER: Thank you, Your Honor.

17 (Alternate jurors enter courtroom.)

18 THE COURT: Ladies of the jury, I want  
19 to thank you very much for your participation in  
20 this case. Please do not think that your time  
21 has been wasted, that you have not been important  
22 to our process because had one of the original  
23 twelve jurors been unable to serve then you would  
24 have taken his or her place and one of you would  
25 have, and possibly both of you. That's the

1 reason that I got two alternates in this matter.

2 This is going to conclude your  
3 responsibilities in this case.

4 That's the good news. The bad news is that  
5 your colleagues are probably anxiously awaiting  
6 outside that door to come in. We're going to try  
7 to get a jury in our next case.

8 So, I'm going to just let y'all -- one of  
9 your colleagues is already out there. I'll allow  
10 you to take a seat with them and we'll see what  
11 we can do. If you need to take a break, please  
12 feel free to do so.

13 Thank you very much ladies.

14 (Thereafter, other matters were heard by the Court.)

15 THE COURT: Let me remind everyone in  
16 the courtroom that when a verdict is returned if  
17 do you not feel that you can control your  
18 emotions, you need to remain outside because I  
19 will not tolerate any outburst whatsoever.

20 Regardless of what the verdict is, no  
21 outburst. If you do not feel that you can  
22 control your emotions, you need to stay outside  
23 because I will hold you in contempt of Court and  
24 I will put you in jail.

25 I can assure you of that. That is something

1 that is ironclad. That is a promise, so please  
2 understand that.

3 All right. We'll stand at ease while the  
4 jury comes in.

5 (1:30 P.M.)

6 (Off the record discussion.)

7 THE COURT: We'll stand at ease until  
8 they bring the Defendant over. We'll stand at  
9 ease for just a moment.

10 (Off-the-record discussion.)

11 THE COURT: Thank you. Take your  
12 seats, please.

13 All right. The jury has forwarded a  
14 question: Can we get the definition of armed  
15 robbery.

16 I intend to bring the jury back and charge  
17 them as to armed robbery. All right.

18 Let's bring our jury back.

19 (Jury enters courtroom at 1:40 P.M.)

20 THE COURT: Mr. Foreman, I have  
21 received your question which states: Can we get  
22 the definition of armed robbery, signed by the  
23 foreman and dated today.

24 In that regard, let me recharge you as to  
25 armed robbery.

## QUESTION FROM THE JURY

1           What is armed robbery? The crime of armed  
2 robbery includes all of the elements of larceny  
3 and robbery.

4           First, I would like to explain to you what  
5 is meant by larceny and what is meant by robbery.  
6 What then is larceny?

7           I charge you that there are four elements  
8 which must be present and established beyond a  
9 reasonable doubt to make out the crime of  
10 larceny.

11           These four elements are as follows: One,  
12 that there was a taking; two, that the taking was  
13 of personal property; three, that after being  
14 taken away the -- that after being taken the  
15 property was carried away; four, that the taking  
16 and carrying away of the property was done with  
17 the intent to steal.

18           And I charge you that United States'  
19 currency is personal property.

20           Now, robbery includes each of the four  
21 elements I have just explained. In addition to  
22 these four elements, two other elements are  
23 necessary to make out the crime of robbery.

24           Those elements are that the property must be  
25 taken from the person of another or in her

## QUESTION FROM THE JURY

1 presence, and that the taking and carrying away  
2 of the property must have been accomplished by  
3 placing the other person in fear by violence or  
4 threats of violence so as to make that person  
5 surrender the property without their consent and  
6 against their will.

7 Therefore, the crime of armed robbery  
8 includes all of the elements of larceny and  
9 robbery.

10 In order to make out the crime of armed  
11 robbery, however, an additional element must be  
12 proved; the robbery must have been committed  
13 while armed with a deadly weapon.

14 The person committing the robbery must have  
15 had and used a deadly weapon with which he  
16 obtained possession of the property or placed the  
17 one possessing the property in fear in order to  
18 obtain the property.

19 Section Sixteen Eleven Three Thirty of the  
20 Code of Laws of the State of South Carolina 1976  
21 as amended provides, a person convicted of the  
22 crime of robbery while armed with a pistol,  
23 derth, slingshot, metal knuckles, razor, or other  
24 deadly weapon commits armed robbery.

25 I charge you that a hammer is a deadly

## QUESTION FROM THE JURY

1        weapon within the terms of the statute.

2                With that instruction, Mr. Foreman, as to  
3        the definition of armed robbery I'll send you  
4        back to the jury room and you may continue your  
5        deliberations.

6        (Jury exits courtroom at 1:45 P.M.)

7                THE COURT: All right. Anything  
8        further from the State?

9                MR. GIBBONS: No, sir.

10               THE COURT: Defendant?

11               MR. KOGER: No, Your Honor.

12               THE COURT: All right. We'll stand at  
13        ease then until we get a question or the verdict.

14        (Question from jury marked as Court's Exhibit 3.)

15        (Thereupon other matters were heard by the Court.

16               THE COURT: While we're waiting for the  
17        Defendant's return, let me remind everyone that  
18        my earlier warning that once the verdict is  
19        returned that I will not tolerate any outburst  
20        whatsoever.

21               If do you not feel that you can contain your  
22        emotion, you need to remove yourself from the  
23        courtroom at this time.

24               All right. It's my understanding that the  
25        jury has reached a verdict. Please bring the

## VERDICT

1 jury back.

2 (Jury enters courtroom at 2:00 P.M.)

3 THE COURT: Mr. Foreman, it's my  
4 understanding that you have reached a verdict to  
5 which y'all twelve agree.

6 Is that correct?

7 FOREMAN OF THE JURY: We have, Your  
8 Honor.

9 THE COURT: And you have filled out the  
10 verdict forms as I have instructed you?

11 FOREMAN OF THE JURY: We have.

12 THE COURT: Please hand them to the  
13 bailiffs.

14 FOREMAN OF THE JURY: (Complying.)

15 THE COURT: Case 99-GS-05-28, the State  
16 versus Juan Nimmons, indictment for murder. The  
17 verdict of the jury is guilty. And it's signed  
18 Lawrence C. Smoke, dated 3/10/99.

19 Ladies and gentlemen, if that is your  
20 verdict, please indicate by raising your right  
21 hands.

22 (Jurors complying.)

23 THE COURT: Thank you very much. Let  
24 the record reflect that all jurors have raised  
25 their hand in response to the Court's question.

## VERDICT

1           99-GS-05-29, the State versus Juan N.  
2           Nimmons, indictment for armed robbery. The  
3           verdict is guilty, signed Lawrence C. Smoke,  
4           Foreperson of the Petit Jury, dated today,  
5           3/10/99.

6           Mr. Foreman, ladies and gentlemen of the  
7           jury, if this is your verdict, please indicate by  
8           raising your right hands.  
9           (Jurors complying.)

10           THE COURT: Thank you very much. Once  
11           again, let the record reflect that the jury has  
12           raised their hands in response to the Court's  
13           question.

14           Anything further from the State before I  
15           excuse the jury?

16           MR. GIBBONS: Nothing from the jury.

17           THE COURT: From the Defendant?

18           MR. KOGER: Not -- nothing from the  
19           jury.

20           THE COURT: I want to thank you very  
21           much for your participation in this case. This  
22           is going to conclude your responsibilities for  
23           this case.

24           The clerk is going to accompany you to the  
25           jury room in just a moment and give you some

## SENTENCING

1 instructions about your further participation  
2 this week.

3 On behalf of the State of South Carolina and  
4 Bamberg County in particular, I thank you very  
5 much for the attention, the detail that you have  
6 paid throughout the course of this trial, the  
7 attention that you have given to the lawyers as  
8 well as to the Court.

9 I'm going to ask that the clerk take you to  
10 the jury room and from there you will be given  
11 further instructions. The jury may retire.  
12 (Jury exits courtroom at 2:00 P.M.)

13 THE COURT: All right. Anything before  
14 sentencing, Mr. Koger?

15 MR. KOGER: Yes, Your Honor. At this  
16 time I'd like to make a motion for a new trial.

17 The evidence that was presented in the court  
18 during this trial does not support the verdict.

19 THE COURT: Well, Mr. Koger, I  
20 understand the motion that you make and certainly  
21 I've listened to all the testimony and evidence  
22 that has been presented.

23 I allowed the matter to go to the jury and  
24 denied all motions that you made at the  
25 appropriate time.

## SENTENCING

1 I believe the jury has listened to the  
2 testimony and evidence that has been presented  
3 and rendered a verdict based upon it and as such,  
4 I find no reason to interfere with the jury's  
5 verdict.

6 I think that testimony and evidence that was  
7 presented presented a sufficient factual basis  
8 for the jury to make the determination which they  
9 did, so the motion is denied.

10 MR. KOGER: Thank you.

11 MR. GIBBONS: Your Honor, there is a  
12 representative of the family would like to speak  
13 as a victim.

14 THE COURT: Be glad to hear from them.  
15 Please come around and identify yourself,  
16 sir.

17 THE VICTIM: Your Honor, my name is  
18 Anthony Nimmons. I'm the brother of the victim.

19 Me and my family have took time to discuss  
20 this and we came to the conclusion that we have  
21 found him guilty of this incident without  
22 reasonable doubt and we would like to take time  
23 to thank the prosecution for a job well done.  
24 They show great cause and justice for it.

25 And my mother, she wanted to be here but she

## SENTENCING

1 would prefer that he receive life without parole.

2 THE COURT: Thank you, sir.

3 THE VICTIM: Thank you.

4 THE COURT: Anything else from the  
5 State?

6 MR. GIBBONS: No, sir.

7 THE COURT: I think that I know his  
8 prior record. It was presented during the course  
9 of the trial.

10 Mr. Koger, anything you want to present or  
11 anything from Mr. Nimmons?

12 MR. KOGER: Your Honor, we went through  
13 the trial. From day one, Mr. Nimmons, Juan, he  
14 proclaimed his innocence in this matter.

15 And we went through the trial, he proclaimed  
16 his innocence. We heard the testimony.

17 And any type of leniency that the Court is  
18 able to grant or consider, we ask that this Court  
19 would.

20 THE COURT: Anything from you,  
21 Mr. Nimmons?

22 THE DEFENDANT: No, sir.

23 THE COURT: Well, I would think that  
24 I've already done it but I think that Mr. Gibbons  
25 and Mr. Koger both did a very fine job of

## SENTENCING

1 representing their clients, Mr. Gibbons on behalf  
2 of the State and Mr. Koger on behalf of the  
3 Defendant.

4 I think both of these were very fine lawyers  
5 and very good practitioners and represent some of  
6 the best lawyers that I've seen in this State.  
7 And I'm very serious about that. I think that  
8 both of you do an excellent job.

9 This is a case that is, one that is  
10 extremely sad, troubling. I think we see exactly  
11 what happens when drugs take over a person's  
12 life.

13 The police insofar as the statements that  
14 were given, I think that they were very  
15 revealing, the other evidence that was put  
16 together in this case.

17 And, once again, I think that it's one of  
18 the most unfortunate situations that you can  
19 confront when a child takes the life of his own  
20 mother.

21 Sentence of the Court: 99-GS-05-29, that is  
22 the indictment for armed robbery. The Defendant,  
23 Juan M. Nimmons is committed to the State  
24 Department of Corrections for a term of thirty  
25 years.

486

## SENTENCING

1           Then, 99-GS-05-28, that is the indictment  
 2 for murder, the Defendant, Juan M. Nimmons, is  
 3 committed to the State Department of Corrections  
 4 for a determined term of his natural life without  
 5 parole. They are consecutive to each other.

6           Thank you. And take the Defendant away.

7           All right. We will stand at ease. If you  
 8 have any pleas to do, let's get them in here  
 9 about 2:30 and we'll try to get our case started  
 10 back at two.

11       END OF PROCEEDINGS: 2:10 P.M.

12       SOUTH CAROLINA  
 13       COUNTY OF BAMBERG

CIRCUIT COURT  
 GENERAL SESSIONS  
 99-GS-05-28 & 29

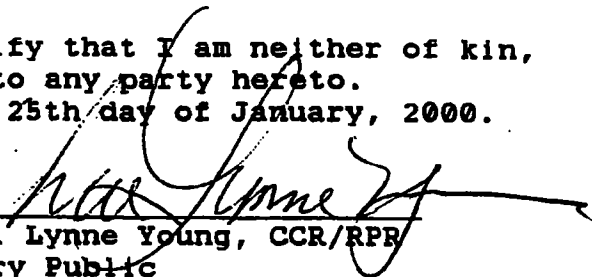
|                                   |               |
|-----------------------------------|---------------|
| 14       STATE OF SOUTH CAROLINA, | ) CERTIFICATE |
|                                   | )             |
| 15       -vs-                     | )             |
|                                   | )             |
| 16       JUAN M. NIMMONS,         | )             |
| Defendant.                        | )             |

17  
 18           I, Cheri Lynne Young, Registered Professional  
 19 Reporter and Official Court Reporter for the State of  
 20 South Carolina, do hereby certify that the foregoing  
 21 transcript of proceedings taken on Tuesday, March 9,  
 22 1999 and Wednesday, March 10, 1999 is a true and  
 23 accurate record of the proceedings had and evidenced  
 24 introduced in the hearing of the above-captioned  
 25 case, in the Circuit Court, Bamberg County, South  
 Carolina, which I recorded in stenotype and later  
 produced in English by use of computer-aided  
 transcription.

The above-mentioned transcript was requested of  
 this court reporter on the 19th day of April, 1999  
 and was delivered to SC Office of Appellate Defense  
 on Thursday, January 27, 2000.

1 I do further certify that I am neither of kin,  
2 counsel, nor interest to any party hereto.

3 This Tuesday, the 25th day of January, 2000.

4   
Cheri Lynne Young, CCR/RPR  
5 Notary Public  
Aiken, South Carolina

6 My Commission Expires November 8, 2006.  
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ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Bamberg County

Gary E. Clary, Circuit Court Judge

S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

JUAN NIMMONS,

APPELLANT

FINAL ~~ANDERS~~ BRIEF OF APPELLANTROBERT M. PACHAK  
Assistant Appellate DefenderSouth Carolina Office  
of Appellate Defense  
1122 Lady Street, Suite 940  
Columbia, S. C. 29201  
(803) 734-1330

ATTORNEY FOR APPELLANT

RECEIVED

JUL 07 2017

APPELLATE DEFENSE

TABLE OF CONTENTS

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| ARGUMENT .....                           | 5 |
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| PETITION TO BE RELIEVED AS COUNSEL ..... | 7 |

TABLE OF AUTHORITIES

**Cases**

State v. Gullette, 277 S.C. 368, 287 S.E.2d 488 (1982) ..... 5

STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in admitting a video tape of appellant's giving of a statement to the police?

STATEMENT OF THE CASE

Appellant was indicted for murder and armed robbery at the March 1999 term of the Bamberg County Grand Jury. He proceeded to trial on March 8-10, 1999, before the Honorable Gary E. Clary and a jury. Appellant was found guilty as charged. He was sentenced to life imprisonment for murder and to thirty (30) consecutive years for armed robbery.

This appeal follows.

ARGUMENT

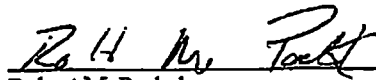
The trial court erred in admitting into evidence a video tape of appellant's giving of a statement to the police.

Appellant was tried for the murder and armed robbery of his mother. Appellant denied any participation in the incident. The solicitor, during direct examination of Investigator Wayne Martin, introduced a video tape of appellant giving a statement to the police. (R. p. 345, lines 2-19). The trial court erred in admitting this video because it gave undue emphasis to the evidence of the statement. State v. Gullledge, 277 S.C. 368, 287 S.E.2d 488 (1982).

CONCLUSION

Because the video was improperly admitted into evidence, appellant's conviction should be reversed.

Respectfully submitted,



Robert M. Pachak  
Assistant Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of January, 2002.

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

Appeal from Bamberg County

Gary E. Clary, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JUAN NIMMONS,

APPELLANT

PETITION TO BE RELIEVED AS COUNSEL

Counsel for Juan Nimmons states:

1. He is Assistant Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.

2. He has reviewed the record of appellant's trial before Judge Gary E. Clary, which was held on 3/10/99, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.

3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Juan Nimmons.

Respectfully submitted,



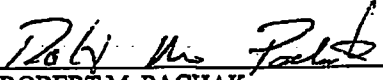
Robert M. Pachak  
Assistant Appellate Defender

ATTORNEY FOR APPELLANT

This 23rd day of January, 2002.

## CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 210(b), SCACR.

  
ROBERT M. PACHAK  
Assistant Appellate Defender

1122 Lady Street, Suite 940  
Columbia, SC 29201  
(803) 734-1330

Attorney for Appellant.

January 23, 2002

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

Appeal from Bamberg County  
Gary E. Clary, Circuit Court Judge

THE STATE,

RESPONDENT,

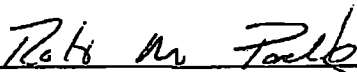
V.

JUAN NIMMONS,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief in the above case has been served upon Donald J. Zelenka, Esquire; a copy of the Record on Appeal and Final Anders Brief has been served on Juan Nimmons #256828, Lieber Correctional Institution, Post Office Box 205, Ridgeville, South Carolina 29472, this 23rd day of January, 2002.

  
Robert M. Pachak  
Assistant Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me  
this 23rd day of January, 2002.

 (L.S.)  
Notary Public for South Carolina  
My Commission Expires: February 3, 2005

**THE STATE OF SOUTH CAROLINA  
In The Supreme Court**

---

The State, Respondent,

v.

Juan Nimmons, Appellant.

---

Appeal From Bamberg County  
Gary E. Clary, Circuit Court Judge

---

Memorandum Opinion No. 2002-MO-051  
Submitted May 15, 2002 - Filed June 13, 2002

---

**APPEAL DISMISSED**

---

Assistant Appellate Defender Robert M. Pachak of  
the South Carolina Office of Appellate Defense, of  
Columbia, for appellant.

Attorney General Charles M. Condon, Chief Deputy  
Attorney General John W. McIntosh, and Assistant  
Deputy Attorney General Donald J. Zelenka, all of  
Columbia; and Solicitor Barbara R. Morgan, of  
Aiken, for respondent.

---

**PER CURIAM:** Dismissed under Rule 220(b)(1), SCACR, after consideration of appellant's pro se briefs and motions and review pursuant to Anders v. California, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted. Further, appellant's request for assistance in obtaining a ruling on post-trial motions pending in the circuit court is denied because those motions are not properly before that court. Foster v. State, 298 S.C. 306, 379 S.E.2d 907 (1989).

s/Jean H. Toal C.J.

s/James E. Moore J.

s/John H. Waller, Jr. J.

s/E.C. Burnett, III J.

s/Costa M. Pleicones J.

---

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

THE STATE.

RESPONDENT

V.

JUAN NIMMONS.

PETITIONER.

APPEAL FROM BAMBERG COUNTY  
GARY E. CLARY, CIRCUIT COURT JUDGE

MEMORANDUM OPINION NO. 2002- MD -051  
SUBMITTED MAY 15, 2002 - FILED JUNE 13, 2002

PETITION FOR REHEARING

JUAN M. NIMMONS \* 256828

LIEBER CORRECTIONAL INST.

P.O. BOX 205

RIDGEVILLE, S.C. 29472

PETITIONER, PRO. SE.

SWORN TO AND SUBSCRIBED BEFORE ME  
THIS 24 DAY OF June  
2002  
[Signature]  
NOTARY PUBLIC  
STATE OF SOUTH CAROLINA  
MY COMMISSION EXPIRES 12/05/05

S.C. ATTORNEY GENERAL OFFICE

1000 ASSEMBLY ST. SUITE 501

COLUMBIA, S.C. 29201

ATTORNEY FOR RESPONDENT

TABLE OF AUTHORITIESCASESPAGE

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| STATE - V- RECTOR, 158 S.C. 212, 155 S.E. 385 . . . . . | 5 |
| STATE - V- BLAKENEY, 33 S.C. 111, 11 S.E. 637 . . . . . | 5 |

STATUTES

|                                                       |         |
|-------------------------------------------------------|---------|
| S.C. CONST. ART. 1 SEC. 3, 14 . . . . .               | 7, 8, 9 |
| S.C. CRIMINAL LAW ANN. SEC. 17-13-50 (A)(4) . . . . . | 10      |
| U.S. CONST. AMEND. 5, 14 . . . . .                    | 7, 8, 9 |

STATE OF SOUTH CAROLINA  
RESPONDENT.

V.

JUAN M. NIMMONS  
PETITIONER.

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

CASE NO. 99-GS-05-028,029

PETITION FOR REHEARING

565

COMES NOW, JUAN M. NIMMONS, PETITIONER PRO. SE. RESPECTFULLY  
SUBMITS THE PETITION FOR A REHEARING AND RECONSIDERATION TO THIS  
HONORABLE COURT FOR REVIEW, PURSUANT TO RULE 224, SCACR.

SUBJECT MATTER JURISDICTION / INDICTMENTS

1. SEE PRO. SE. BRIEF PG. 5 LINE 5, 6 SEE EXHIBITS A + B ATTACHED  
A.) SEE PRO. SE. BRIEF PG. 6 LINE 9-12

SUBJECT MATTER JURISDICTION / ARRAINMENT

2. SEE PG. 7 LINE 13 PRO. SE. BRIEF

MIRANDA VIOLATION

3. SEE PRO. SE. BRIEF PG. 9 LINE 20-22  
A.) SEE TRANSCRIPTS PG. 210 LINES 2-25

JUDGE MISCONDUCT

4. SEE PRO. SE. BRIEF PG. 8 LINE 15-19  
A.) SEE TRANSCRIPTS PG. 48 LINES 14-19  
B.) SEE TRANSCRIPTS PG. 58 LINES 4-9

CONCLUSION

THE PETITIONER PRAYS THIS HONORABLE COURT GRANT RELIEF  
DEEM JUST AND PROPER IN THE ABOVE ENTITLED CASE.

\* Juan M. Nimmons  
JUAN M. NIMMONS # 256828

PETITIONER, PRO. SE.

DATED THIS 24<sup>th</sup> DAY OF JUNE, 2002

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

APPEAL FROM BAMBERG COUNTY  
GARY E. CLARY, CIRCUIT COURT JUDGE

STATE OF SOUTH CAROLINA . . . . . RESPONDENT

V.

JUAN M. NIMMONS . . . . . PETITIONER.

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES THAT A TRUE AND ORIGINAL COPY OF PETITION FOR REHEARING, BY PETITIONER IN THE ABOVE-REFERENCE CASE HAS BEEN SERVED UPON THE FOLLOWING PARTY BELOW, VIA CERTIFIED MAIL THIS 24<sup>th</sup> DAY OF JUNE, 2002.

ADDRESS(ES):

S.C. SUPREME COURT  
DANIEL E. SHEAROUSE, CLERK  
P.O. BOX 11330  
COLUMBIA, S.C. 29211

Juan M. Nimmons  
JUAN M. NIMMONS # 256828  
LIEBEL CORRECTIONAL INST.  
P.O. BOX 205 / 136 WILSON DR.  
RIDGEBILL, S.C. 29472

PETITIONER, PRO. SE.

568

JUAN M. NIMMONS #251628

LIEBER CORRECTIONAL INST.

P.O. BOX 205 / 136 WILBORN DR.

RIDGEVILLE, S.C. 29472-0205

THE HONORABLE DANIEL E. SHEAROUSE

CLERK OF COURT OF THE SUPREME COURT

POST OFFICE BOX 11330

COLUMBIA, S.C. 29211

RE: STATE OF SOUTH CAROLINA - V- JUAN M. NIMMONS  
CASE NO. 99-65-05-028, 029

DEAR: MR. SHEAROUSE

ENCLOSED FOR FILING PLEASE FIND ONE (1) ORIGINAL PETITION FOR REHEARING;  
TABLE OF AUTHORITIES; AND CERTIFICATE OF SERVICE FOR FILING. PLEASE, RETURN A  
COPY TO ME. SO I CAN SERVE ALL AFFECTED PARTIES.

WITH HIGH REGARDS, I AM,

TRULY,

Juan M. Nimmons  
JUAN M. NIMMONS #256928

PETITIONER, PRO. SE.

DATED THIS 24<sup>th</sup> DAY OF JUNE, 2002

The Supreme Court of South Carolina

The State,

Respondent,

v.

Juan Nimmons,

Appellant.

---

ORDER

---

Appellant was convicted of murder and armed robbery.

Appellant's direct appeal was dismissed after an Anders review.

Petitioner has filed a petition for rehearing. Because petitioner has shown no reason for the Court to reconsider its decision in this matter, this petition is denied.



FOR THE COURT

J.

Columbia, South Carolina

August 7, 2002

---



## The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1690

FAX (803) 734-1498

August 7, 2002

### REMITTITUR

The Honorable James B. Hiers  
Post Office Drawer 150  
Bamberg, SC 29003-0150

Re: The State, Nimmons, Juan  
1999-GS-05-00028, 00029

Dear Mr. Hiers:

The above referenced matter is hereby remitted to the trial court. A copy of the judgment of this Court is attached.

Very truly yours,

*Brenda F. Shealy*  
DEPUTY CLERK *djs*

BFS/djp  
Enclosure

cc: Mr. Juan Nimmons, #256828  
Assistant Deputy Attorney General Donald J. Zelenka

STATE OF SOUTH CAROLINA

COUNTY OF BAMBERG

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

Juan M. Nimmons, #256828 Plaintiff(s)

vs.

State of South Carolina Defendant(s)

(Please Print)

Submitted By:

Juan M. Nimmons

Address:

#256828

Lieber Corr. Inst.

PO Box 205

Ridgeville, SC 29472

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

## DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.  
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.  
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.  
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

## NATURE OF ACTION (Check One Box Below)

- |                                                   |                                                                                             |                                                           |                                                          |
|---------------------------------------------------|---------------------------------------------------------------------------------------------|-----------------------------------------------------------|----------------------------------------------------------|
| <b>Contracts</b>                                  | <b>Torts - Professional Malpractice</b>                                                     | <b>Torts - Personal Injury</b>                            | <b>Real Property</b>                                     |
| <input type="checkbox"/> Constructions (100)      | <input type="checkbox"/> Dental Malpractice (200)                                           | <input type="checkbox"/> Assault/Slander/Libel (300)      | <input type="checkbox"/> Claim & Delivery (400)          |
| <input type="checkbox"/> Debt Collection (110)    | <input type="checkbox"/> Legal Malpractice (210)                                            | <input type="checkbox"/> Conversion (310)                 | <input type="checkbox"/> Condemnation (410)              |
| <input type="checkbox"/> Employment (120)         | <input type="checkbox"/> Medical Malpractice (220)                                          | <input type="checkbox"/> Motor Vehicle Accident (320)     | <input type="checkbox"/> Foreclosure (420)               |
| <input type="checkbox"/> General (130)            | <input type="checkbox"/> Previous Notice of Intent Case #                                   | <input type="checkbox"/> Premises Liability (330)         | <input type="checkbox"/> Mechanic's Lien (430)           |
| <input type="checkbox"/> Breach of Contract (140) | 20 -CP- -                                                                                   | <input type="checkbox"/> Products Liability (340)         | <input type="checkbox"/> Partition (440)                 |
| <input type="checkbox"/> Other (199)              | <input type="checkbox"/> Notice/ File Med Mal (230)                                         | <input type="checkbox"/> Personal Injury (350)            | <input type="checkbox"/> Possession (450)                |
|                                                   | <input type="checkbox"/> Other (299)                                                        | <input type="checkbox"/> Wrongful Death (360)             | <input type="checkbox"/> Building Code Violation (460)   |
|                                                   |                                                                                             | <input type="checkbox"/> Other (399)                      | <input type="checkbox"/> Other (499)                     |
| <b>Inmate Petitions</b>                           | <b>Judgments/Settlements</b>                                                                | <b>Administrative Law/Relief</b>                          | <b>Appeals</b>                                           |
| <input checked="" type="checkbox"/> PCR (500)     | <input type="checkbox"/> Death Settlement (700)                                             | <input type="checkbox"/> Reinstate Driver's License (800) | <input type="checkbox"/> Arbitration (900)               |
| <input type="checkbox"/> Mandamus (520)           | <input type="checkbox"/> Foreign Judgment (710)                                             | <input type="checkbox"/> Judicial Review (810)            | <input type="checkbox"/> Magistrate-Civil (910)          |
| <input type="checkbox"/> Habeas Corpus (530)      | <input type="checkbox"/> Magistrate's Judgment (720)                                        | <input type="checkbox"/> Relief (820)                     | <input type="checkbox"/> Magistrate-Criminal (920)       |
| <input type="checkbox"/> Other (599)              | <input type="checkbox"/> Minor Settlement (730)                                             | <input type="checkbox"/> Permanent Injunction (830)       | <input type="checkbox"/> Municipal (930) -               |
|                                                   | <input type="checkbox"/> Transcript Judgment (740)                                          | <input type="checkbox"/> Forfeiture-Petition (840)        | <input type="checkbox"/> Probate Court (940)             |
|                                                   | <input type="checkbox"/> Lis Pendens (750)                                                  | <input type="checkbox"/> Forfeiture-Consent Order (850)   | <input type="checkbox"/> SCDOT (950)                     |
|                                                   | <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) | <input type="checkbox"/> Other (899)                      | <input type="checkbox"/> Worker's Comp (960)             |
|                                                   | <input type="checkbox"/> Other (799)                                                        |                                                           | <input type="checkbox"/> Zoning Board (970)              |
|                                                   |                                                                                             |                                                           | <input type="checkbox"/> Administrative Law Judge (980)  |
| <b>Special/Complex /Other</b>                     |                                                                                             |                                                           | <input type="checkbox"/> Public Service Commission (990) |
| <input type="checkbox"/> Environmental (600)      | <input type="checkbox"/> Pharmaceuticals (630)                                              |                                                           | <input type="checkbox"/> Employment Security Comm (991)  |
| <input type="checkbox"/> Automobile Arb. (610)    | <input type="checkbox"/> Unfair Trade Practices (640)                                       |                                                           | <input type="checkbox"/> Other (999)                     |
| <input type="checkbox"/> Medical (620)            | <input type="checkbox"/> Out-of State Depositions (650)                                     |                                                           |                                                          |
| <input type="checkbox"/> Other (699)              | <input type="checkbox"/> Sexual Predator (510)                                              |                                                           |                                                          |

Submitting Party Signature:

Juan M. Nimmons

Date:

July - 2012

FILED  
BAMBERG COUNTY  
JAMES B. HERS  
CLERK OF COURT  
BAMBERG, SC  
2012 JUL 17 AM 9:50

STATE OF SOUTH CAROLINA )

County of BAMBERG )

IN THE COURT OF COMMON PLEAS

Juan M. Nimmons, # 256828 )

Full name and prison number (if any) of Applicant )

v. )

State of South Carolina )

APPLICATION FOR

POST-CONVICTION RELIEF

JAMES H. HERS  
CLERK OF COURT  
BAMBERG, SC

2012 JUL 17 11 AM 9:50

FILED  
BAMBERG COUNTY**INSTRUCTIONS - READ CAREFULLY**

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Lieber Corr. Inst., PO Box 205, Ridgeville, SC 29472
2. Name and location of Court which imposed sentence Bamberg County Court of General Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 98-GS-05-28 Murder

(b) 98-GS-05-29 Armed Robbery

(c) \_\_\_\_\_

5. The date upon which sentence was imposed and the terms of the sentence:

(a) March 10, 1999 Life

(b) March 10, 1999 Thirty years (consecutive)

(c) \_\_\_\_\_

6. Check whether a finding of guilty was made:

(a) after a plea of guilty No

(b) after a plea of not guilty Yes

(c) after a plea of nolo contendere No

7. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. S.C. Supreme Court

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(b) the result in each such Court to which you appealed:

i. affirmed conviction and sentence

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(c) the date of each such result:

i. June 13, 2002

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. State v. Nimmons, Op. No. 2002-MO-051

ii. \_\_\_\_\_

iii. \_\_\_\_\_

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) N/A

- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) SEE ATTACHED PAGE 3(A)
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) SEE ATTACHED PAGE 3(A)
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? Yes
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. PCR (2003-CP-05-0068)
- ii. PCR (2009-CP-05-0200)
- iii. PCR (2010-CP-05-0205)
- iv. Writ of Habeas Corpus in Original Jurisdiction
- (b) the name and location of the Court in which each was filed:
- i. Bamberg County Court of Common Pleas
- ii. Same as "i" above
- iii. Same as "i" above

NIMMONS, Juan  
# 256828

## PCR Addendum

- 10(a) Applicant is entitled to a new trial based upon the after-discovered evidence of his actual innocence wherein another individual admitted to commission of the crime for which Applicant was convicted.
- 11(a) On or about September 27, 2011, an individual sent an email to another member of Applicant's family in which that person admitted to the murder of Applicant's mother and that Applicant did not commit the crimes. Applicant was contacted and received this information in February 2012.

The email and affidavit(s) or deposition(s) of the person receiving the email and law enforcement authorities forwarding the information to South Carolina authorities will be presented at the evidentiary hearing.

This evidence would change the result if a new trial was held; it has been discovered within the past one (1) year; could not be discovered before trial or the first post-conviction proceeding by exercise of due diligence; is material to the issue of guilt or innocence; and is not merely cumulative or impeaching. It is more likely than not no reasonable juror would have found Applicant guilty beyond a reasonable doubt.

iv. South Carolina Supreme Court

(c) the disposition thereof:

i. dismissed

ii. dismissed

iii. dismissed

iv. dismissed

(d) the date of each such disposition:

i. 9/18/07

ii. 5/24/10

iii. 3/29/11

iv. 11/2/11

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. No

ii. No

iii. No

iv. No

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

i. N/A

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(b) the proceedings in which each ground was raised:

i. \_\_\_\_\_

ii. \_\_\_\_\_

iii. \_\_\_\_\_

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Newly-discovered evidence within past one (1) year
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? N/A
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. Joshua Koger, Esq, Bamberg County Bar
- ii. Robert Pachak, S.C. Office of Appellate Defense
- iii. Sherri H. Stoney, Esq., Augusta, GA
- iv. Katherine Huggins, S.C. Office of Appellate Defense
- (b) the proceedings at which each such attorney represented you:
- i. Trial and sentencing
- ii. direct appeal
- iii. PCR (2003-CP-05-0068)
- iv. PCR certiorari

19. State clearly the relief you seek in filing this application:

Applicant seeks a new trial based upon the newly-discovered  
evidence of his actual innocence; and that the convictions and  
sentences be vacated.

20. Are you now under sentence from any other court that you have not challenged?

No

Revised 3/2003

STATE OF SOUTH CAROLINA )

County of DORCHESTER )

VERIFICATION

I, Juan M. Nimmons, # 256828, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Juan M. Nimmons

SWORN to and subscribed before me this 12th  
 day of July, 2012.

Sylvia Jones (L.S.)  
 Notary Public

My Commission Expires: 1/24/2018

**APPLICATION TO PROCEED WITHOUT PAYMENT  
OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF**

I, Juan M. Nimmons, # 256828, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Juan M. Nimmons  
Applicant

SWORN or affirmed to and subscribed before me this  
12th day of July, 2012.

Sylvia Jones  
Notary Public

My Commission Expires: 1/24/2018

FILED  
BAMBERG COUNTY  
STATE OF SOUTH CAROLINA  
COUNTY OF BAMBERG  
2012 OCT 10 AM 10:20  
IN THE COURT OF COMMON PLEAS  
FOR THE SECOND JUDICIAL CIRCUIT

Juan M. Nimmons, 256828,

JAMES E. MYERS  
CLERK OF COURT  
BAMBERG, SC

Case No. 2012-CP-05-0131

Applicant,

v.

**RETURN AND MOTION TO DISMISS**

State of South Carolina,

Respondent.

In response to the post-conviction relief application filed July 17, 2012, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Bamberg County. The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Bamberg County. Applicant was indicted during the March 1999 term of the Bamberg County Grand Jury for Murder (1999-GS-05-0028) and Armed Robbery (1999-GS-05-0029). He was represented by Joshua Koger, Esquire. Applicant proceeded to a jury trial, where he was convicted as indicted. On March 10, 1999, the Honorable Gary E. Clary sentenced Applicant to life without parole for Murder and to a consecutive term of thirty years imprisonment for Armed Robbery.

A notice of appeal was filed and an appeal perfected. Following an Anders review, the appeal was dismissed. State v. Nimmons, Op. No. 2002-MO-051 (S.C. Sup. Ct. filed June 13, 2002). Applicant's Petition for Rehearing was denied; the Remittitur was sent August 7, 2002.

The Applicant subsequently filed an application for post-conviction relief on May 1, 2003 (C.A. No. 2003-CP-05-0068). The Applicant raised the following issues in his first post-conviction relief application:

1. Ineffective assistance of counsel.
  - a. Failure to submit notice of alibi defense and present alibi witnesses.
  - b. Failure to object to solicitor's closing argument.
  - c. Failure to object to sentence.
  - d. Failure to request a Jackson v. Denno hearing.
  - e. Failure to subpoena Rowland Dowling.
  - f. Failure to move for directed verdict for charge of Armed Robbery.
  - g. Failure to request jury charge on alibi.
  - h. Failure to object to solicitor's pitting of witnesses.
  - i. "...failing to motion to reveal Rule 404(b), S.C.R.Evid., State v. Lyle, evidence."
  - j. Failure to move for continuance.
  - k. "...failing to subpoena the coroner/toxicologist as there was not time of death, which could have changed outcome of proceedings because witnesses observed different individuals entering victim's residence this particular night."
2. Ineffective assistance of appellate counsel.
3. Court lacked subject matter jurisdiction on Armed Robbery charge.

The State made its Return on September 11, 2003. An evidentiary hearing was convened on August 8, 2007, before the Honorable J. Michael Baxley. Applicant was present and represented by Sherry Stoney, Esquire. Judge Baxley dismissed the application with prejudice by order dated September 18, 2007, and filed October 4, 2007. The South Carolina Supreme Court denied Applicant's Petition for Writ of Certiorari on September 3, 2009. The Remittitur was sent on September 21, 2009.

Applicant filed another post-conviction relief application on October 2, 2009 (2009-CP-05-0200). In this application, Applicant set forth the following grounds for relief:

1. "Was Petitioner denied his one bite of the apple when PCR counsel failed to [e]nsure that all grounds for relief were raised in Petitioner's prior PCR application and addressed at Petitioner's PCR hearing?"

2. "Was Petitioner denied due process of law and equal protection when trial counsel and PCR counsel failed to challenge the defects in the indictments that allowed Petitioner to be tried and convicted on defective instruments that have unduly prejudiced Petitioner and denied him of his constitutional rights?"
3. "Was Petitioner denied due process of law and equal protection when PCR counsel failed to raise the issue of trial counsel conceding Petitioner's guilt to the jury?"
4. "Was PCR counsel ineffective for failing to raise trial counsel's failure to ask the court that the sentences that were handed down be run concurrent as mandated by S.C. Code Ann. 17-25-50?"

In a Conditional Order dated May 24, 2010, the Honorable Doyet A. Early, III, found that the application should be dismissed based on the statute of limitations and successiveness; Applicant was given twenty days in which to respond. After consideration of Applicant's responses to the Conditional Order, a Final Order of Dismissal was signed by Judge Early on August 13, 2010, and filed August 17, 2010. Applicant filed a Petition for Writ of Certiorari in the South Carolina Supreme Court. In an order dated September 28, 2010, the Supreme Court dismissed the matter for failure to show an arguable basis why the determination by the lower court was improper pursuant to Rule 243(c), SCACR. The Remittitur was sent on October 15, 2010.

Applicant filed a third post-conviction relief application on October 7, 2010 (2010-CP-05-0205). In this application, Applicant set forth the following grounds for relief:

1. Ineffective assistance of appellate counsel.
  - a. "Counsel failed to raise meritorious issues."
  - b. "Counsel acted under conflict of interest."
  - c. "Counsel failed to show-up or attend the PCR hearing."

The Respondent made its Return and Motion to Dismiss on March 28, 2011 requesting the application be summarily dismissed as successive and barred by the statute of limitations. In a Conditional Order dated March 29, 2011, the Honorable Doyet A. Early, III, found that the application should be dismissed based on the statute of limitations and successiveness; Applicant was given twenty days in which to respond. After receiving no response from Applicant, Judge

Early signed a Final Order dismissing the application on July 6, 2011 and entered on July 12, 2011. The Applicant did not appeal the denial of his third application for post-conviction relief.

Attached herewith and incorporated herein are the records of the Bamberg County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, appellate records and the prior post-conviction relief records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

## II.

In his current application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Applicant is entitled to a new trial based upon the after-discovered evidence of his actual innocence wherein another individual admitted to commission of the crime for which Applicant was convicted."
  - a. "On or about September 27, 2011, an individual sent an email to another member of Applicant's family in which that person admitted to the murder of Applicant's mother and that Applicant did not commit the crimes. Applicant was contacted and received this information in February 2012."

"The email and affidavit(s) or deposition(s) of the person receiving the email and law enforcement authorities receiving the information to South Carolina authorities will be presented at the evidentiary hearing."

"This evidence would change the result if a new hearing was held; it has been discovered within the past one (1) year; could not have been discovered before trial or the first post-conviction proceeding by exercise of due diligence; is material to the issue of guilt or innocence; and is not merely cumulative or impeaching. It is more likely than not no reasonable juror would have found Applicant guilty beyond a reasonable doubt."

Applicant does not provide any documentation or affidavits to support his allegations.

## III.

The Respondent submits that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offenses he challenges in this Application on March 10, 1999. The Remittitur was sent, after the Applicant's unsuccessful appeal, on August 7, 2002. The Applicant was therefore required to file his application on or before August 8, 2003. This Application was filed on July 17, 2012, which was well after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, the Respondent requests that this Court summarily dismiss the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

## IV.

Applicant's assertion that he is entitled to a new trial based upon after-discovered evidence is without merit. A defendant requesting a new trial based on after discovered evidence must show that the evidence:

(1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and (5) Is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983).

The Applicant has not shown that the alleged evidence meets *any* of the requirements for after-discovered evidence, as he has failed to present any evidence to the Court which could allow for such a claim to proceed forward. The Court should summarily dismiss this allegation.

## V.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

## VI.

WHEREFORE, Respondent moves to summarily dismiss the application because it was filed after the statute of limitations had expired, is successive to Applicant's previous PCR applications and its claims of after-discovered evidence are without merit.

*[signature page to follow]*

Respectfully submitted,

ALAN WILSON  
Attorney General

JOHN W. McINTOSH  
Chief Deputy Attorney General

SALLEY ELLIOTT  
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN  
Assistant Attorney General

By:

Megan E. Harrigan  
Attorneys for the Respondents  
Post Office Box 11549  
Columbia, South Carolina 29211

October 8, 2012

STATE OF SOUTH CAROLINA  
COUNTY OF BAMBERG

JUAN M. NIMMONS, 256828,

**Applicant,**

**VS**

STATE OF SOUTH CAROLINA,

**Respondent.**

FILED  
BARBER COUNTY  
2013 OCT 10 AM 10:20  
IN THE COURT OF COMMON PLEAS  
JAMES B. HIGGS  
CLERK OF COURT  
2012-CP-050131  
BARBER, SC

## AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Juan M. Nimmons, #256828**  
**Lieber Correctional Institution**  
**Post Office Box 205**  
**Ridgeville, SC 29472**

**DATED this 8<sup>th</sup> day of October, 2012.**

Lauren Meara  
Lauren Meara, Legal Assistant  
For Respondent

STATE OF SOUTH CAROLINA )  
COUNTY OF BAMBERG )

IN THE COURT OF COMMON PLEAS  
FOR THE SECOND JUDICIAL CIRCUIT

Juan Nimmons, 256828, )  
Applicant, )  
v. )  
State of South Carolina, )  
Respondent. )

Case No.: 2012-CP-05-0131

APPLICANT'S AMENDED OPPOSITION  
TO RESPONDENT'S MOTION TO  
DISMISS AND CONDITIONAL ORDER  
OF DISMISSAL

TO THE RESPONDENT ABOVE NAMED: STATE OF SOUTH CAROLINA

YOU WILL PLEASE TAKE NOTICE that the Applicant, by and through his undersigned attorney, hereby enters these Objections to the Motion to Dismiss and the proposed Conditional Order of Dismissal, submitted by Respondent on October 17, 2012, and served on Applicant's counsel on August 19, 2014. The Applicant believes that based on after-discovered evidence of Applicant's actual innocence, he is entitled to a new trial.

**STATEMENT OF THE CASE**

This matter is before the Court by way of an application for post-conviction relief filed on July 17, 2012. In its Return, Respondent requested that the application be summarily dismissed.

**PROCEDURAL HISTORY**

The Applicant was indicted for the murder (1999-GS-05-028) and armed robbery (1999-GS-05-029) of his mother, Zola "Pat" Robinson. Applicant proceeded to trial and was convicted. On March 10, 1999, the Honorable Gary E. Clary sentenced Applicant to life without parole for murder and to a consecutive term of thirty years imprisonment for armed robbery.

FILED  
BAMBERG COUNTY  
2014 SEP -2 PM 3:57  
JAMES B. HERS  
CLERK OF COURT  
BAMBERG, SC

Applicant appealed and the South Carolina Supreme Court affirmed applicant's conviction and sentences. *State v. Nimmons*, Op. No. 2002-MO-051 (June 13, 2002).

On May 1, 2003, Applicant filed his first action for post-conviction relief (C.A. No. 2003-CP-05-068). The application was dismissed with prejudice on September 18, 2007. The South Carolina Supreme Court denied Applicant's Petition for Writ of Certiorari on September 3, 2009.

Applicant filed a second action for post-conviction relief on October 2, 2009 (C.A. No. 2009-CP-05-0200). In a Conditional Order of Dismissal dated May 24, 2010, the Honorable Doyet A. Early, III, dismissed the second application based on the statute of limitations and successiveness. Judge Early signed the Final Order of Dismissal on August 13, 2010. Applicant filed a Petition for Writ of Certiorari in the Supreme Court of South Carolina. In an order dated September 28, 2010, the Supreme Court dismissed the matter for failure to show why the determination by the lower court was improper.

Applicant filed a third post-conviction relief action on October 7, 2010 (C.A. No. 2010-CP-05-0205). In a Conditional Order dated March 29, 2011, the Honorable Doyet A. Early, III, found that the application should be dismissed based on the statute of limitations and successiveness. Judge Early signed the Final Order on July 6, 2011.

The instant application is based on after-discovered evidence of Applicant's actual innocence.

#### **SUMMARY DISMISSAL**

Summary dismissal is appropriate when the court is satisfied "that the applicant is not entitled to post-conviction relief and no purpose would be served by any further proceedings . . . ." (S.C. Code Ann. §17-27-70(b)). In contrast, summary dismissal "on

the pleadings and record is not proper if there exists a material issue of fact.” *Id.* The South Carolina Supreme Court held that, “[s]ummary dismissal of a PCR application without a hearing is appropriate only when (1) it is apparent on the face of the application that there is no need for a hearing to develop any facts and (2) the applicant is not entitled to relief.” *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (citing S.C. Code Ann. §17-27-70(b) and (c)). Furthermore, “[w]hen considering the State’s motion for summary dismissal of an application for PCR, a judge must assume facts presented by an applicant are true and view those facts in the light most favorable to the applicant.” *Wilson v. State*, 348 S.C. 215, 559 S.E.2d 581, 582 (2002); *AlShabazz v. State*, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (2000). Applicant contends that the after-discovered evidence, set forth in the supporting affidavits, of another individual confessing to the offenses for which Applicant was convicted creates the existence of a material issue of fact and that an evidentiary hearing is needed to develop the facts. Additionally, as set out below, Applicant is entitled to relief under S.C. Code Ann. §§17-27-45(c) and 17-27-90, therefore, summary dismissal would be inappropriate.

#### **STATUTE OF LIMITATIONS AND SUCESSIVENESS**

Respondent asserts that the application was filed well after the statute of limitations had expired. In support of this argument Respondent mistakenly relies on S.C. Code Ann. §17-27-45(a). Applicant contends that the controlling statute of limitations for after-discovered evidence is found in S.C. Code Ann. §17-27-45(c). The discovery rule reads as follows:

If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have

been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(c).

Applicant filed the instant application for post-conviction relief on July 17, 2012. The after-discovered evidence of another individual confessing to the crimes only became available to Applicant on September 27, 2011, thus, this application, was filed within the one year statute of limitations under S.C. Code Ann. §17-27-45(c).

A post-conviction relief applicant must raise all grounds for relief in his original, supplemental or amended application. Furthermore, any ground not raised may not be used as the basis for a subsequent application, “unless the court finds a ground for relief asserted which for sufficient reason was not asserted” in the original, supplemental or amended application. (S.C. Code Ann. §17-27-90). The basis for Applicant’s present post-conviction relief action is after-discovered evidence. This evidence was not available to Applicant at the time of trial, appeal or previous post-conviction relief actions. Applicant asserts that the after-discovered evidence creates genuine issues of material fact whether Applicant’s post-conviction relief claim is successive; therefore, summary dismissal without an evidentiary hearing would be inappropriate.

In a recent PCR case, our Supreme Court addressed the issue that is before this Court. In *McCoy v. State*, 401 S.C. 363, 737 S.E.2d 623 (2013), the Court held that “[w]here an applicant alleges facts that would establish an exception to either the statute of limitations or the prohibition against successive PCR applications and those facts are not conclusively refuted by the record before the PCR court, a question of fact is raised which can only be resolved by a hearing.” *Id.* at 369, 626.

Applicant asserts that the instant post-conviction relief action was filed within the statute of limitations provided by S.C. Code Ann. §17-27-45(c). Additionally, the after-

discovered evidence of Applicant's actual innocence was not available to Applicant at the time of trial, appeal or previous post-conviction relief actions. Therefore, there is sufficient reason for why this ground was not previously asserted. Furthermore, based on the record and pleadings, genuine issues of material fact exist as to whether Applicant's post-conviction relief action is untimely or successive, which can only be resolved by an evidentiary hearing.

### NEW TRIAL

An applicant requesting a new trial based on after-discovered evidence must show that the evidence:

(1) is such as would probably change the result if a new trial was had; (2) has been discovered since the trial; (3) could not by the exercise of due diligence have been discovered before the trial; (4) is material to the issue of guilt or innocence; and, (5) is not merely cumulative or impeaching. *Hayden v. State*, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983).

Respondent claims that Applicant has failed to show that the alleged evidence meets any of the requirements that would allow this claim to proceed. In contrast, Applicant contends that the after-discovered evidence presented in his application for post-conviction relief and the supporting affidavits creates a *prima facie* case that the evidence presented meets all the requirements found in *Hayden* and is that he entitled to an evidentiary hearing to develop the facts and properly present the claim for a new trial.

***1. The evidence is such as would probably change the result if a new trial was had.***

Darryl Williams confessed to the murder of Zola "Pat" Robinson. On September 27, 2011, Darryl Williams contacted Ms. Marcella Hooker, a member of Applicant's family, via email and wrote, "I did kill Pat." (See attached affidavit with record of email.) His confession combined with the fact that Mr. Williams was found driving the victim's

vehicle the morning after her murder would probably change the result of a new trial. This evidence directly contradicts the State's case against Applicant and the State's primary evidence, which was Applicant's own confession. Applicant contends that a second confession creates reasonable doubt to Applicant's own guilt and that if a new trial were held this evidence would probably change the result.

***2. The evidence has been discovered since the trial.***

The after-discovered evidence was first available to Applicant on September 27, 2011. The evidence of Darryl Williams's confession was not available to Applicant or his attorneys before or during his trial, appeal, or previous post-conviction relief actions.

***3. The evidence could not by the exercise of due diligence have been discovered before the trial.***

The evidence of Darryl Williams's confession was not available to Applicant before the trial. In fact, Darryl Williams testified for the State at Applicant's trial and did not reveal his involvement in the murder of Zola "Pat" Robinson. Applicant could not have discovered the evidence by the exercise of due diligence before the trial. In contrast, Darryl Williams's actively concealed the evidence from Applicant, his attorneys, and law enforcement until he confessed in September 2011.

***4. The evidence is material to the issue of guilt or innocence.***

The after-discovered evidence is material to the issue of guilt or innocence. "Evidence is material . . . if there is a reasonable probability that . . . the result of the proceeding would have been different. A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." *State v. Cain*, 297 S.C. 497, 503, 377 S.E.2d 556, 559 (1988), citing *United States v. Bagley*, *supra* at 682, 105 S.Ct. at 3383, 87 L.Ed.2d at 494. The evidence of a second confession to the offenses, which Applicant

was convicted of, creates a reasonable probability that the outcome of the trial would have been different and undermines the confidence in the outcome of trial and is, therefore, material to the issue of guilt or innocence.

***5. The evidence is not merely cumulative or impeaching.***

Since neither the State nor Applicant offered an eyewitness, the after-discovered evidence is neither cumulative nor impeaching.

Applicant contends he has shown that the after-discovered evidence meets each element under *Hayden* for a motion for a new trial. Additionally, Applicant has shown that this post-conviction relief action was filed within the statute of limitations and is not successive.

Wherefore, Applicant respectfully prays that the Order of Dismissal not be made a final order and that an evidentiary hearing be scheduled on the request for a new trial based on after-discovered evidence.

Respectfully submitted,



Janek C. Kazmierski  
Wilson & Luginbill, LLC  
Post Office Box 1150  
Bamberg, SC 29003  
(803) 245-7799  
(803) 245-0037 (fax)  
Attorney for Applicant

September 2, 2014

FILED  
BAMBERG COUNTY  
2014 SEP -2 PM 3:57  
JAMES B. HERS  
CLERK OF COURT  
BAMBERG, SC

STATE OF SOUTH CAROLINA     )  
                                                            )  
 COUNTY OF BAMBERG            )

I, Janek C. Kazmierski, attorney for Applicant, in the matter of *Juan M. Nimmons v. State of South Carolina*, No.: 2012-CP-05-0131, do hereby certify that I have served the foregoing, Applicant's Amended Opposition to Respondent's Motion to Dismiss and Conditional Order of Dismissal, in the above matter by mailing a copy of the same by first class mail, postage prepaid to the attorney(s)/person(s) at the address(es) indicated as follows:

Daniel Gourley  
 Assistant Attorney General  
 P.O. Box 11549  
 Columbia, SC 29211-1549

By:   
 Janek C. Kazmierski  
 P. O. Box 1150  
 Bamberg, SC 29003  
 (803) 245-7799  
 Attorney for Plaintiff

Bamberg, S. C.  
 September 2, 2014

FILED  
 BAMBERG COUNTY  
 2014 SEP -2 PM 3:57  
 JAMES B. HERS  
 CLERK OF COURT  
 BAMBERG, SC

STATE OF SOUTH CAROLINA  
COUNTY OF BAMBERG

Juan Nimmons, #256828

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2012-CP-05-0131

**ORDER FOR FUNDING**

This matter is before the Court by way of an application for Post-Conviction Relief filed on July 17, 2012. In its Return, Respondent requested that the application be summarily dismissed. On October 23, 2012, Applicant filed an Opposition to Respondent's Motion to Dismiss and Conditional Order of Dismissal and Requested an Evidentiary Hearing on the matter of actual innocence based on after-discovered evidence. Respondent did not oppose the Applicant's request for an evidentiary hearing.

On November 20, 2014, Applicant, represented by his undersigned counsel, and Respondent, represented by Assistant Attorney General Daniel Gourley, agreed that to fully investigate the above matters, the Applicant's attorney must locate, interview, and possibly depose certain witnesses. It is believed that one witness, Darryl Williams, is located in Orangeburg County, South Carolina. The other witness, Marcella Curry-Hooker is believed to reside in Pennsylvania.

Based on all the foregoing, this Court finds and concludes that funds should be granted to the Applicant to fully investigate the above matters.

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2015 MAY 19 AM 10:52  
JAMES B. HERS  
CLERK OF COURT  
BAMBERG, SC

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**IT IS THEREFORE ORDERED:**

1. That the request for funding in the amount of \$300.00 to hire a private investigator to locate and interview Darryl Williams be granted.
2. That the request for funding in the amount of \$700.00 to hire a private investigator to locate and interview Marcella Curry-Hooker be granted.

AND IT IS SO ORDERED this 28<sup>th</sup> day of January, 2015.

Orangeburg, South Carolina



~~THE HONORABLE~~ EDGAR DICKSON  
Presiding Judge  
First Judicial Circuit

STATE OF SOUTH CAROLINA  
COUNTY OF BAMBERG

Juan Nimmons, #256828

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2012-CP-05-0131

**MOTION FOR ADDITIONAL  
FUNDING AND DISCOVERY**

**TO: DANIEL GOURLEY, ESQUIRE, ATTORNEY FOR RESPONDENT:**

Applicant, through his undersigned attorney, seeks approval for additional funding and leave from the Court to invoke discovery to fully investigate matters involving the Applicant's claim of actual innocence based on newly discovered evidence pursuant to the Uniform Post-Conviction Procedure Act and the Court's Order for Funding dated January 28, 2015.

The Uniform Post-Conviction Procedure Act states in pertinent part:

"A party in a noncapital post-conviction relief proceeding shall be entitled to invoke the processes of discovery available under the South Carolina Rules of Civil Procedure if, and to the extent that, the judge in the exercise of his discretion and for good cause shown grants leave to do so, but not otherwise." *South Carolina Code §17-27-150(A).*

As noted, the Uniform Post-Conviction Procedure Act allows a judge to grant leave to allow for discovery in noncapital cases for good cause. This Court signed an Order for Funding dated January 28, 2015, to locate and interview key witnesses to Applicant's claim of actual innocence based on newly discovered evidence. The two witnesses, Marcella Curry-Hooker and Darryl Williams, have been located and interviewed. Based on their interviews and other facts gathered during the course of investigating Applicant's claim of actual innocence, the Applicant requests additional funding to continue investigating the claim and requests the Court to grant

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JAMES  
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BAMBERG  
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leave and allow Applicant to invoke the processes of discovery available under the South Carolina Rules of Civil Procedure.

In particular, Applicant requests the Court grant additional funds for a pathologist to determine time of death and an expert to testify regarding false confessions. Determining the time of death is essential to Applicant's case. Dr. Susan McConnell, MD, performed the autopsy on the victim. When asked at trial if she was able to determine the time of death, she answered, "No. It's difficult for us to assess the time of death since we're not at the scene. The body tends to be refrigerated before it's transported. We got the body the next day, so that's that we wouldn't do." *State of South Carolina v. Juan Nimmons*, Trial Transcript, page 95. The time of death is essential to Applicant's claim of innocence because Applicant, if allowed, will present evidence concerning his whereabouts at the time of death. This evidence can only be presented if the time of death can be conclusively established. Applicant requests additional funds in the amount of \$5,000.00 to retain a forensic pathologist to determine the time of death.

Applicant has maintained that his confession was involuntary. At the time of the confession, Applicant was under the influence of multiple drugs and testified that the confession was obtained through threats and coercion. In light of the alleged confession of Darryl Williams, the validity and reliability of Applicant's confession comes into question. An expert on false confessions is necessary to refute the State's primary evidence that it relied on to convict Applicant of murder. Applicant requests additional funds in the amount of \$5,000.00 to retain an expert on false confessions.

Applicant also requests additional funding to locate and interview the following witnesses that have been identified as potentially having valuable information pertaining to Applicant's claim:

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BAMBERG, S.C.

1. Travis Rice:  
Identified by Darryl Williams during interview as the person he received the victim's vehicle from the morning after victim was murdered.
2. Travis Yon:  
Witness initially identified by Darryl Williams as the person he received the victim's vehicle from the morning after victim was murdered.
3. Sandra Jordan:  
Identified as an alibi for Darryl Williams.
4. Denise Orr:  
Estranged wife of Darryl Williams.
5. Trooper Woods, Pennsylvania State Police:  
Identified as the person who received the alleged confession from Marcella Curry-Hooker and provided it to SLED.
6. Lt. Harley, SLED:  
Identified as the person who investigated the alleged confession of Darryl Williams.
7. Odell Crum:  
Witness to events on the night of the murder.
8. Beverly Whetstone:  
Relative of victim and witness to events on the night of the murder.
9. Sue Hope: and  
Witness to events on the night of the murder.
10. Jerome Owens.  
Alibi witness of Applicant.

After each of these witnesses have been located and interviewed Applicant would make a determination, which, if any, of the witnesses would need to be deposed and additional funds would need to be requested at that time. Applicant requests additional funds in the amount of \$3,500.00 to locate and interview the above identified witnesses.

Applicant requests additional funds and the Court's leave for good cause to depose Marcella Curry-Hooker. Ms. Curry-Hooker, as stated above, received the alleged confession of Darryl Williams through email. Her testimony is essential to establishing the authenticity of the communication and introducing it as evidence during the evidentiary hearing. Applicant requests additional funds in the amount of \$3,500.00 to take the video deposition of Marcella Curry-Hooker, who resides in Philadelphia, Pennsylvania, for use at the evidentiary hearing.

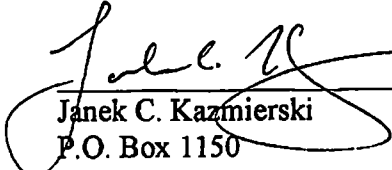
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 JAMES R. HIGGS  
 CLERK OF COURT  
 DANFORD, S.C.

Finally, Applicant requests additional funds and the Court's leave for good cause to depose Darryl Williams. Darryl Williams allegedly confessed to the murder of Zola "Pat" Robinson in an email to Marcella Curry-Hooker. His testimony will be the primary evidence presented at the evidentiary hearing. In order to properly prepare Applicant's case, Applicant's attorney needs to probe the factual issues surrounding the alleged confession. Applicant would request additional funds in the amount of \$500.00 to take the discovery deposition of Darryl Williams.

This motion is based upon the relevant law and such other matters as may be brought to the attention of the court.

September 3, 2015

WILSON & LUGINBILL LLC

  
Janek C. Kazmierski

P.O. Box 1150

Bamberg, SC 29003

(803) 245-7799

(803) 245-0037

ATTORNEY FOR APPLICANT

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2015 SEP -3 PM 3:56  
JAMES B. HERS  
CLERK OF COURT  
BAMBERG, SC

STATE OF SOUTH CAROLINA )

COUNTY OF BAMBERG )

**CERTIFICATE OF SERVICE**

I, Nancy Knopf, secretary to attorney Janek C. Kazmierski, attorney for Applicant, in the matter of *Juan M. Nimmons v. State of South Carolina*, No.: 2012-CP-05-0131, do hereby certify that I have served the foregoing, Motion for Additional Funding and Discovery, in the above matter by mailing a copy of the same by first class mail, postage prepaid to the attorney(s)/person(s) at the address(es) indicated as follows:

Daniel Gourley  
 Assistant Attorney General  
 P.O. Box 11549  
 Columbia, SC 29211-1549

By: Nancy Knopf

Nancy Knopf, Secretary to  
 Janek C. Kazmierski, Counsel for Applicant  
 WILSON & LUGINBILL, LLC  
 P. O. Box 1150  
 Bamberg, SC 29003  
 (803) 245-7799

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 CLERK OF COURT  
 BAMBERG, SC

Bamberg, South Carolina  
 September 3, 2015

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS )

COUNTY OF BAMBERG )

FIRST JUDICIAL CIRCUIT )

CASE NO.: 2012-CP-05-0131 )

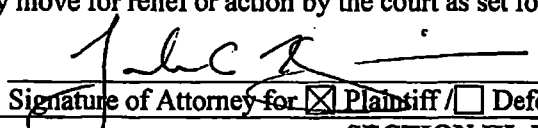
Juan Nimmons, #256828 )**MOTION AND ORDER INFORMATION  
FORM AND COVERSHEET**

Plaintiff, )

vs. )

State of South Carolina )

Defendant. )

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                         |                                                                         |                                                         |                                                              |                                                            |                                          |                                                        |                                                        |                                                                |                                                                                                                                                           |  |                               |  |                                       |  |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------|---------------------------------------------------------|--------------------------------------------------------------|------------------------------------------------------------|------------------------------------------|--------------------------------------------------------|--------------------------------------------------------|----------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------|--|-------------------------------|--|---------------------------------------|--|
| <b>Plaintiff's Attorney:</b><br>Janek C. Kazmierski, Bar No. 100951<br>Address:<br>PO Box 1150<br>Bamberg, SC 29003<br>Phone: _____ Fax _____<br>E-mail: _____ Other: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                | <b>Defendant's Attorney:</b><br>Daniel Gourley, Bar No. _____<br>Address:<br>PO Box 11549<br>Columbia, SC 29211<br>Phone: _____ Fax _____<br>E-mail: _____ Other: _____ |                                                                         |                                                         |                                                              |                                                            |                                          |                                                        |                                                        |                                                                |                                                                                                                                                           |  |                               |  |                                       |  |
| <input type="checkbox"/> <b>MOTION HEARING REQUESTED</b> (attach written motion and complete SECTIONS I and III)<br><input checked="" type="checkbox"/> <b>FORM MOTION, NO HEARING REQUESTED</b> (complete SECTIONS II and III)<br><input type="checkbox"/> <b>PROPOSED ORDER/CONSENT ORDER</b> (complete SECTIONS II and III)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                         |                                                                         |                                                         |                                                              |                                                            |                                          |                                                        |                                                        |                                                                |                                                                                                                                                           |  |                               |  |                                       |  |
| <b>SECTION I: Hearing Information</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                         |                                                                         |                                                         |                                                              |                                                            |                                          |                                                        |                                                        |                                                                |                                                                                                                                                           |  |                               |  |                                       |  |
| Nature of Motion: _____<br>Estimated Time Needed: _____ Court Reporter Needed: <input type="checkbox"/> YES / <input type="checkbox"/> NO                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                         |                                                                         |                                                         |                                                              |                                                            |                                          |                                                        |                                                        |                                                                |                                                                                                                                                           |  |                               |  |                                       |  |
| <b>SECTION II: Motion/Order Type</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                         |                                                                         |                                                         |                                                              |                                                            |                                          |                                                        |                                                        |                                                                |                                                                                                                                                           |  |                               |  |                                       |  |
| <input checked="" type="checkbox"/> Written motion attached<br><input type="checkbox"/> Form Motion/Order<br>I hereby move for relief or action by the court as set forth in the attached proposed order.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                         |                                                                         |                                                         |                                                              |                                                            |                                          |                                                        |                                                        |                                                                |                                                                                                                                                           |  |                               |  |                                       |  |
| <br>Signature of Attorney for <input checked="" type="checkbox"/> Plaintiff / <input type="checkbox"/> Defendant                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | September 3, 2015<br>Date submitted                                                                                                                                     |                                                                         |                                                         |                                                              |                                                            |                                          |                                                        |                                                        |                                                                |                                                                                                                                                           |  |                               |  |                                       |  |
| <b>SECTION III: Motion Fee</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |                                                                                                                                                                         |                                                                         |                                                         |                                                              |                                                            |                                          |                                                        |                                                        |                                                                |                                                                                                                                                           |  |                               |  |                                       |  |
| <input type="checkbox"/> PAID - AMOUNT: \$ _____<br><input type="checkbox"/> EXEMPT: (check reason) <table style="width: 100%; margin-top: 5px;"> <tr> <td><input type="checkbox"/> Rule to Show Cause in Child or Spousal Support</td> <td><input type="checkbox"/> State Agency v. Indigent Party</td> </tr> <tr> <td><input type="checkbox"/> Domestic Abuse or Abuse and Neglect</td> <td><input checked="" type="checkbox"/> Post-Conviction Relief</td> </tr> <tr> <td><input type="checkbox"/> Indigent Status</td> <td><input type="checkbox"/> Motion for Stay in Bankruptcy</td> </tr> <tr> <td><input type="checkbox"/> Sexually Violent Predator Act</td> <td><input type="checkbox"/> Motion for Execution (Rule 69, SCRCP)</td> </tr> <tr> <td colspan="2"><input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions</td> </tr> <tr> <td colspan="2">Name of Court Reporter: _____</td> </tr> <tr> <td colspan="2"><input type="checkbox"/> Other: _____</td> </tr> </table> |                                                                                                                                                                         | <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support | <input type="checkbox"/> State Agency v. Indigent Party | <input type="checkbox"/> Domestic Abuse or Abuse and Neglect | <input checked="" type="checkbox"/> Post-Conviction Relief | <input type="checkbox"/> Indigent Status | <input type="checkbox"/> Motion for Stay in Bankruptcy | <input type="checkbox"/> Sexually Violent Predator Act | <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP) | <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions |  | Name of Court Reporter: _____ |  | <input type="checkbox"/> Other: _____ |  |
| <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                    | <input type="checkbox"/> State Agency v. Indigent Party                                                                                                                 |                                                                         |                                                         |                                                              |                                                            |                                          |                                                        |                                                        |                                                                |                                                                                                                                                           |  |                               |  |                                       |  |
| <input type="checkbox"/> Domestic Abuse or Abuse and Neglect                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               | <input checked="" type="checkbox"/> Post-Conviction Relief                                                                                                              |                                                                         |                                                         |                                                              |                                                            |                                          |                                                        |                                                        |                                                                |                                                                                                                                                           |  |                               |  |                                       |  |
| <input type="checkbox"/> Indigent Status                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | <input type="checkbox"/> Motion for Stay in Bankruptcy                                                                                                                  |                                                                         |                                                         |                                                              |                                                            |                                          |                                                        |                                                        |                                                                |                                                                                                                                                           |  |                               |  |                                       |  |
| <input type="checkbox"/> Sexually Violent Predator Act                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | <input type="checkbox"/> Motion for Execution (Rule 69, SCRCP)                                                                                                          |                                                                         |                                                         |                                                              |                                                            |                                          |                                                        |                                                        |                                                                |                                                                                                                                                           |  |                               |  |                                       |  |
| <input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  |                                                                                                                                                                         |                                                                         |                                                         |                                                              |                                                            |                                          |                                                        |                                                        |                                                                |                                                                                                                                                           |  |                               |  |                                       |  |
| Name of Court Reporter: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                         |                                                                         |                                                         |                                                              |                                                            |                                          |                                                        |                                                        |                                                                |                                                                                                                                                           |  |                               |  |                                       |  |
| <input type="checkbox"/> Other: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                         |                                                                         |                                                         |                                                              |                                                            |                                          |                                                        |                                                        |                                                                |                                                                                                                                                           |  |                               |  |                                       |  |
| <b>JUDGE'S SECTION</b><br><input type="checkbox"/> Motion Fee to be paid upon filing of the attached order.<br><input type="checkbox"/> Other: _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | JUDGE CODE _____<br>Date: _____                                                                                                                                         |                                                                         |                                                         |                                                              |                                                            |                                          |                                                        |                                                        |                                                                |                                                                                                                                                           |  |                               |  |                                       |  |
| <b>CLERK'S VERIFICATION</b>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |                                                                                                                                                                         |                                                                         |                                                         |                                                              |                                                            |                                          |                                                        |                                                        |                                                                |                                                                                                                                                           |  |                               |  |                                       |  |
| Collected by: _____ Date Filed: _____<br><input type="checkbox"/> MOTION FEE COLLECTED: \$ _____<br><input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |                                                                                                                                                                         |                                                                         |                                                         |                                                              |                                                            |                                          |                                                        |                                                        |                                                                |                                                                                                                                                           |  |                               |  |                                       |  |

STATE OF SOUTH CAROLINA )  
COUNTY OF BAMBERG )  
)   
Juan Nimmons, #256828, )  
)   
Applicant, )  
)   
v. )   
)   
State of South Carolina, )  
)   
Respondent. )  
\_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
FOR THE SECOND JUDICIAL CIRCUIT

Case No. 2012-CP-05-131

**ORDER APPROVING FUNDS**

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BAMBERG COUNTY  
2016 FEB 26 AM 9:24  
JAMES B. HIERS  
CLERK OF COURT  
BAMBERG, SC

By Motion on September 3, 2015 the Applicant, through appointed counsel, requested this Court to approve funds for obtaining a pathologist to determine time of death and an expert to testify regarding false confessions. Applicant further requests additional funds to locate and interview various witnesses, to depose Marcella Curry-Hooker, and to depose Darryl Williams. A conference called was held on August 27, 2015. Following this discussion, this Court finds and approves funds for \$500.00 dollars to allow Counsel to depose Darryl Williams. This Court further finds that all other requests are in the motion dated September 3, 2015 are denied.

**IT IS THEREFORE ORDERED THAT:**

1. That funding for a deposition of Darryl Williams in the amount of \$500.00 is approved for purpose of assisting counsel in investigating Applicant's PCR case.

AND IT IS SO ORDERED this 19<sup>th</sup> day of Feb., 2016.



EDGAR W. DICKSON.  
Presiding Judge  
Second Judicial Circuit



, South Carolina

STATE OF SOUTH CAROLINA ) IN THE COURT OF GENERAL SESSIONS  
COUNTY OF ORANGEBURG ) FIRST JUDICIAL CIRCUIT

2012-CP-05-00131

Juan Nimmons, )  
) )  
Appellate, )  
) )  
v. ) Transcript of Record  
) )  
State of South Carolina, )  
) )  
Respondent, )  
) )  
\_\_\_\_\_ )

September 30, 2016  
Orangeburg, South Carolina

B E F O R E:

The Honorable Edgar W. Dickson, Judge

A P P E A R A N C E S:

Janek Kazmierski, Esquire  
Attorney for the Appellant

Ms. Coleman, Esquire  
Attorney for the Respondent

Hilda M. Jordan, CVR-M  
Circuit Court Reporter

I N D E X

PCR

WITNESS/DESCRIPTIONPAGE NO.

Daryl Williams .....direct..... 9

Daryl Williams .....cross..... 29

Daryl Williams .....cross..... 31

Daryl Williams .....redirect..... 34

## EXHIBITS:

Plaintiff's Exhibit No. 1 ..... 11

Plaintiff's Exhibit No. 2 ..... 24

Plaintiff's Exhibit No. 3 ..... 28

Certificate of Court Reporter ..... 39

Nimmons v State

9/30/16

3

1           THE COURT: All right. This is a Bamberg County  
2 case, 2012-CP-05-131, Juan Nimmons number 256828 is the  
3 Applicant. The State of South Carolina is the respondent.  
4 And Ms. Coleman, you represent State?

5           MS. COLEMAN: Yes, Your Honor.

6           THE COURT: And Mr. Kazmierski, you represent Mr.  
7 Nimmons?

8           MR. KAZMIERSKI: Yes, Your Honor.

9           THE COURT: And I believe we have scheduled and  
10 evidentiary hearing to take the testimony of -- is it Daryl  
11 Williams?

12          MR. KAZMIERSKI: Yes, Your Honor.

13          THE COURT: Okay. All right. And because I don't  
14 know what Mr. Williams' testimony is going to be, but  
15 because it concerned a criminal matter I believed it was  
16 appropriate to have an attorney be appointed for the  
17 purposes of explaining to him what his rights were and what  
18 would happen based on -- what could happen based on his  
19 testimony. Mr. Kazmierski, before the hearing you had  
20 expressed some concern about having a counsel appointed for  
21 him. And so I'm going to clear up that on the record and  
22 note your objection to me having Mr. -- I believe you had an  
23 objection to --

24          MR. KAZMIERSKI: Your Honor, after discussing with  
25 my client, we'll withdraw our objection to Mr. Williams

1 being provided with counsel.

2 THE COURT: Okay. Thank you, sir. I appreciate  
3 that. And so noted on the record.

4 Now, Mr. Stevens, Mr. Breen Stevens from the Orangeburg  
5 County Public Defender's Office was appointed for the  
6 purposes of having discussions with Mr. Williams about his  
7 testimony today. And, Mr. Stevens, have you had an  
8 opportunity to talk with Mr. Williams?

9 MR. STEVENS: I have, Your Honor.

10 THE COURT: Okay. And did Mr. Williams wish for  
11 you to continue to represent him?

12 MR. STEVENS: Yes, he does, Judge.

13 THE COURT: He does? Okay. All right. And he is  
14 prepared to testify today?

15 MR. STEVENS: He is, Your Honor.

16 THE COURT: Okay. All right. Thank you, sir.

17 MR. STEVENS: Yes, sir.

18 THE COURT: All right. Anything from the State  
19 before we go forward with this?

20 MS. COLEMAN: No, Your Honor.

21 THE COURT: Okay. All right.

22 MS. COLEMAN: And if you'd like I'd be glad to  
23 give the procedural history of the case or we can move right  
24 into it.

25 THE COURT: No, go ahead. Go ahead. Let's put it

Nimmons v State

9/30/16

5

1 on the record.

2 MS. COLEMAN: Sure.

3 THE COURT: It'S been going on for a while and Mr.  
4 Kazmierski you doing a great job working this thing, so. Go  
5 ahead.

6 MS. COLEMAN: May it please the Court.

7 THE COURT: Yes, ma'am.

8 MS. COLEMAN: The Applicant is presently confined  
9 in the South Carolina Department of Corrections pursuant to  
10 orders of commitment of the Clerk of Court for Bamberg  
11 County. Applicant was indicated at the March 1999 term of  
12 the Bamberg County Grand Jury for first degree murder and  
13 armed robbery. He was represented on the charges by Joshua  
14 Koger, Esquire. Applicant proceeded to a jury trial and was  
15 convicted. On March 10th, 1999, Applicant was sentenced by  
16 the Honorable Perry E. Clary to life without parole for  
17 murder and to a consecutive term of thirty years  
18 imprisonment for armed robbery. A notice of appeal was  
19 filed and an appeal was perfected. Following an Anders  
20 review, the appeal was dismissed. Applicant's petition for  
21 rehearing was denied and the remittitur was sent on August,  
22 7, 2002. The Applicant subsequently filed a timely  
23 application for post-conviction relief on May 1st, 2003.  
24 The applicant raised the following issues in his first post-  
25 conviction relief application: ineffective assistance of

1 counsel; ineffective assistance of appellate counsel; and,  
2 lack of subject matter jurisdiction. The State made its  
3 return on September 11, 2003. An evidentiary hearing was  
4 convened on August 8, 2007 before the Honorable J. Michael  
5 Baxley. Applicant was present and represented by Sherry  
6 Stoney, Esquire. Judge Baxley dismissed the application  
7 with prejudice by order dated September 18, 2007 and filed  
8 October 4th, 2007. South Carolina Supreme Court denied  
9 applicants petition for writ of certiorari on September 3rd,  
10 2009. The remittitur was sent on September 21st, 2009.  
11 Applicant subsequently filed a second post-conviction relief  
12 application on October 2nd, 2009. In this application  
13 applicant set forth the following grounds for relief:  
14 Ineffective assistance of PCR counsel; denial of due  
15 process; and, ineffective assistance of counsel. In a  
16 conditional order dated May 24th, 2010, the Honorable Doyet  
17 A. Early, III found that the application should be dismissed  
18 based on the statute of limitations and successiveness.  
19 Applicant was given twenty days in which to respond. After  
20 consideration of Applicant's responses to the conditional  
21 order, a final order of dismissal was signed by Judge Early  
22 on August 13, 2010 and filed August 17, 2010. Applicant  
23 filed a petition for writ of certiorari in the South  
24 Carolina Supreme Court. In an order dated September 28th,  
25 2010, the Supreme Court dismissed the matter for failure to

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7

1 show an arguable basis why the determination by the lower  
2 court was improper pursuant to rule 243© of the South  
3 Carolina Appellate Court Rules. The remittitur was sent on  
4 October 15th, 2010. Applicant subsequently filed a third  
5 post-conviction relief application on October 7, 2010. In  
6 this application, applicant set forth the following grounds  
7 for relief: Ineffective assistance of appellate counsel.  
8 The respondent made its return and motion to dismiss on  
9 March 28th, 2011 requesting the application be summarily  
10 dismissed as successive and barred by the statute of  
11 limitations. In a conditional order dated March 29, 2011,  
12 the Honorable Doyet A Early, III found that the application  
13 should be dismissed based on statute of limitations and  
14 successiveness. After receiving no response after twenty  
15 days, Judge Early signed a final order of dismissal on July  
16 6, 2011 filed July 12, 2011. The applicant did not appeal  
17 the denial of his third application for post conviction  
18 relief. Applicant subsequently filed a fourth application  
19 for post-conviction relief on July 17th, 2012, which is what  
20 we're here on today, alleging that he was being held in  
21 custody unlawfully based on an allegation of newly  
22 discovered evidence. The State filed its return motion to  
23 dismiss on October 8th, 2012. A conditional order of  
24 dismissal was signed by Judge Early and filed on October  
25 17th, 2012. Applicant filed a memorandum in opposition to

1 the motion to dismiss and an evidentiary hearing on the  
2 merits was ordered. Applicant filed a motion for funding  
3 and discovery, which was signed by Judge Early on January  
4 28th, 2015. In accordance with this discovery order,  
5 Applicant deposed the witness in this case, Daryl Williams.  
6 Applicant is present today for his evidentiary hearing and  
7 is represented in this matter by Mr. Janek Kazmierski. I  
8 think that's it.

9 THE COURT: Thank you. Mr. Kazmierski.

10 MR. KAZMIERSKI: We are ready to move forward,  
11 Your Honor.

12 THE COURT: All right.

13 MR. KAZMIERSKI: And we would call Mr. Daryl  
14 Williams.

15 THE COURT: All right. Mr. Williams when you get  
16 up there, if you'd put your left hand on the Bible and raise  
17 your right hand.

18 (WHEREUPON, Daryl Williams was  
19 sworn to tell the truth.)

20 THE COURT: And, Mr. Williams, you're doing good.  
21 You need to talk this loud when you're answering the  
22 questions too if you don't mind.

23 THE WITNESS: All right. No problem.

24 THE COURT: Thank you, sir.

25 Mr. Kazmierski, he is all yours.

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9

1                    MR. KAZMIERSKI: Thank you, Your Honor. May it  
2 please the Court?

3                    THE COURT: Yes, sir.

4                    DARYL WILLIAMS - DIRECT EXAMINATION

5 BY MR. KAZMIERSKI:

6 Q     Mr. Williams, we met back for the first time on October  
7 16th of 2015 and I took your deposition. Do you recall  
8 that?

9 A     Yes, sir.

10 Q     Okay. Tell me about your relationship with Marcella  
11 Curry Hooker?

12 A     She was a family member.

13 Q     Okay. How long had you known Ms. Hooker?

14 A     I knew her -- she used to come down from Philadelphia  
15 to my grandmother house because she used to live across the  
16 street from me and so I knew her almost all my life.

17 Q     Okay. And how old are you?

18 A     I'm fifty-one now.

19 Q     So you've known her for -- would it be fair to say  
20 you've known her for fifty years?

21 A     I'm going to say forty-five.

22 Q     Okay. And what is your relationship with her?

23 A     My cousin.

24 Q     Okay. Would you frequently see her?

25 A     I ain't seen her in years.

1     Q     Okay. Growing up?

2     A     Yes, sir.

3     Q     If she came down for the summers and --

4     A     Yeah. During our younger -- when we was kids, we used  
5     to play together when we was young.

6     Q     Okay. When's the last time you saw her?

7     A     It been a lot of years. I can't recall how many years  
8     it was.

9     Q     Okay. Do you recall the last time you talked to her?

10    A     The last time I talked to her was on Facebook.

11    Q     Okay. When?

12    A     On Facebook, maybe ten years ago it might be now.

13    Q     Okay. So I'm going to show you -- this is what you  
14    were shown when you were interviewed by SLED on October 16,  
15    2012. And, again, that's what I showed you when I deposed  
16    you on October 16th, 2015. And does that appear to be the  
17    Facebook conversation that you had with Marcella Curry  
18    Hooker?

19    A     Similar. I mean, you know, it been a lot of years.  
20    It's similar to it.

21    Q     Okay. Is that your picture?

22    A     Yes, sir.

23    Q     And that's your name there that says Daryl Williams and  
24    with text underneath it?

25    A     Yeah, that's Daryl Williams.

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11

1     Q     Okay.

2                     MR. KAZMIERSKI: I'd like to introduce that?

3                                     (Plaintiff's Exhibit No. 1,

4     Facebook conversation, was marked and entered.)

5     BY MR. KAZMIERSKI:

6     Q     Now, Mr. Williams, you know Juan Nimmons; correct?

7     A     Yes, sir.

8     Q     How do you know Juan Nimmons?

9     A     We grew up together. His mother was like a mother to  
10     me.

11     Q     And his mother was the victim in the criminal case,  
12     that's Zola Pat Robertson; correct?

13     A     Yes, sir.

14     Q     Describe your relationship with Mr. Nimmons?

15     A     When we was young, when we was young, coming up, my  
16     family didn't have too much money for cars, but his mother  
17     was like a mother. We would go on trips. She would take  
18     care of me just like she would take care of him. So I look  
19     at her more as a mother figure than a cousin.

20     Q     Okay. Now, around the time of the initial criminal  
21     case, the murder back in '98, you and Mr. Nimmons saw each  
22     other frequently; correct?

23     A     Off and on. I had to work, but mostly it'd be out of  
24     work we'd see each other. Mostly, I'd say out of seven  
25     days, we'd see each other maybe five days a week.

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1     Q     Okay. So you and Mr. Nimmons spent time together and  
2     would you saw on a regular basis you were with Mr. Nimmons?

3     A     Well, no, but if he come around. I didn't go look for  
4     him. He usually come around where I was at.

5     Q     Okay. And he's your cousin; correct?

6     A     Yes, sir.

7     Q     Okay. Now, in the original criminal case you testified  
8     for the State?

9     A     Yes, sir.

10    Q     Okay. And you testified about seeing Mr. Nimmons on  
11    August 6, 1998?

12    A     Yes, sir.

13    Q     And seeing him again on the 7th, August 7th, 1998?

14    A     Yes, sir.

15    Q     And you testified that on the morning of the 7th, you  
16    returned the victim's car to your uncle; is that correct?

17    A     Yes, sir.

18    Q     And when you returned the car you had one or two people  
19    that you described as drug dealers with you; is that  
20    correct?

21    A     They wasn't with me. They brought the car to me at the  
22    time and I carried the car back to my uncle.

23    Q     Okay. So when you returned the car -- and your uncle's  
24    name at that time -- he's passed away now. That's William  
25    Nimmons; right?

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1     A     Yes, sir.

2     Q     Okay. When you returned the car to William Nimmons,  
3     you were by yourself?

4     A     Yes, sir.

5     Q     Okay. And do you recall testifying that the drug  
6     dealers were scared for some reason?

7     A     I don't recall that.

8     Q     You don't recall testifying to that?

9     A     I mean, I don't know that I didn't. They couldn't find  
10    him at the time and they knew I was his cousin so they give  
11    the car to me and I carried the car back around to my uncle  
12    house.

13    Q     Okay. And you knew that was Pat's car?

14    A     Who --

15    Q     Zola Robinson's car?

16    A     Yes, sir.

17    Q     And just to clarify, you didn't return that car -- you  
18    didn't return her car to her; did you?

19    A     I give -- my uncle was in the yard so I give him the  
20    keys.

21    Q     And so in answer to my question you didn't return it to  
22    her, you returned it to William Nimmons?

23    A     No. I didn't return it to her. I give the keys to my  
24    uncle.

25    Q     Okay. I want to move to September of 2011. At that

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1     time, you were -- I believe you were working at Piggly  
2     Wiggly; is that correct?

3     A     2011? It's possible. I done been there three or four  
4     times. There's a possible chance.

5     Q     Okay. Do you recall testifying to that in your  
6     deposition that you were working at Piggly Wiggly?

7     A     I can't recall.

8                 MR. KAZMIERSKI: Your Honor, do you mind if I show  
9     the witness a copy of his deposition.

10                THE COURT: No, he can review it. Show it. And  
11     that's the October 16 --

12                MR. KAZMIERSKI: October 16th, 2015 deposition.

13                THE COURT: Okay. You don't have an extra copy  
14     that Mr. Stevens could follow with you?

15                MR. KAZMIERSKI: I don't, Your Honor.

16                MS. COLEMAN: I have one copy, I could --

17                MR. KAZMIERSKI: I might have a condensed.

18                THE COURT: Well, she's got a copy she can pass  
19     him.

20     BY MR. KAZMIERSKI:

21     Q     Mr. Williams, I'm on page 11. No, let's start on page  
22     10, line 22. You see the line where it says how about  
23     September 2011, do you know where you were working at that  
24     time? That would have probably been Voorhees and Piggly  
25     Wiggly; right?

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1     A     Yeah. I was working both jobs at that time. Piggly  
2     Wiggly and Voorhees. I had two jobs.

3     Q     Okay. So September 2011 you're working at Piggly  
4     Wiggly during the day. And then in the evening time, from  
5     four to midnight, you're working at Voorhees?

6     A     Yes, sir.

7     Q     Okay. And what was your position at Voorhees?

8     A     I was a resident coordinator.

9     Q     And what kind of responsibilities did the resident  
10    coordinator --

11    A     I had to make sure they're quiet in the dormitory, the  
12    kids was doing what they supposed to do and ain't doing  
13    nothing they not supposed to do in the dormitories.

14    Q     Okay. So you're kind of an assistant and you monitor  
15    activity?

16    A     Yes, sir.

17    Q     Do you recall that conversation that I showed you  
18    earlier, the Facebook conversation that happened on  
19    September 27th of 2011 with Marcella Curry Hooker?

20    A     Yes, sir.

21    Q     Okay. What do you recall from that conversation?

22    A     I made a mistake. Marcella, she was telling me that  
23    her cousin was mad at me because I testified against him.  
24    And I told him that -- I meant to put, I did not kill -- I  
25    told the truth, I did not kill Pat. But I put I did kill

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1     Pat because it was a mistake when I wrote that because I was  
2     like working at the time, trying to pay attention to the  
3     kids, what they was doing, make sure they was doing right  
4     and on the computer at the same time.

5     Q     Okay. So let me ask you a few specific questions about  
6     that conversation. I'm going to provide you with this copy,  
7     which has been marked as Plaintiff's Exhibit 1. And if you  
8     see the -- in the text there is -- it starts with he did  
9     what he say. And that was your comment; is that correct?  
10     It's the first line?

11     A     I can't recall that one.

12     Q     You can't recall saying it or --

13     A     I mean, that he did what he say. Like I say, I was at  
14     work at the time, trying to pay attention to the kids and  
15     talk on the computer at the same time, so.

16     Q     But you agree with me that this is the conversation you  
17     had with Marcella Curry Hooker?

18     A     It's similar to it. I mean, it been so many years, I'm  
19     not sure if that's the right words or not. I don't know if  
20     some words were changed on there or not.

21     Q     Isn't this the same conversation that you provided a  
22     voluntary statement about to SLED? Isn't this the same  
23     conversation you reviewed?

24     A     Yeah. Well, yeah. Yes, sir.

25     Q     And you wrote a voluntary statement back in October

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1     2012, October 16th, 2012, concerning a this conversation;  
2     correct?

3     A     Yes. I said I made a mistake and put I did -- I did  
4     not kill Pat instead I did. And I made a mistake on that.

5     Q     And you identified that conversation as being the  
6     conversation that you had with Marcella Curry Hooker?

7     A     As for as the word to word, I'm not sure because I  
8     can't remember was them the same words or not.

9     Q     Okay. But you do recall writing the following  
10     statements in response to Marcella Curry Hooker saying I  
11     told him sometimes we have to do what we have to do to get  
12     by. And you wrote I know, it hurt me to do it, but I did  
13     it. I did kill Pat.

14     A     No.

15     Q     Is that -- do you recall writing that?

16     A     I can't -- what I was telling her --

17     Q     If you answer my question, I'll let you expand on your  
18     answer as much as you want to. But do you recall writing  
19     that?

20     A     I don't recall.

21     Q     You don't recall ever writing that?

22     A     I mean, well, it was years ago and so I'm not sure that  
23     that right there -- words might be different on this paper  
24     that I show.

25     Q     Okay. So if -- tell me then what you do recall?

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1     A     I recall talking to her. As far as what I wrote, I  
2     can't say what I did wrote and what I didn't write at the  
3     time it's been so many years ago. But I know that the  
4     mistake I made on here was I meant to put it did not and I  
5     just put did. I did not put not on it.

6     Q     So when you provided the voluntary statement to SLED --

7     A     Uh-huh. (Affirmative response.)

8     Q     -- stating that you reviewed a conversation that you  
9     had with Marcella Curry Hooker that occurred on September  
10    27th, 2011 and you said I remember the conversation and you  
11    commented on the content of the conversation, did you tell  
12    that agent that this was an incorrect representation of --  
13    or it wasn't a complete representation of the conversation.  
14    you had with Marcella Curry Hooker?

15    A     I can't recall.

16    Q     Let me have you read your statement here, take a look  
17    at it and see if there's anything in there that indicates  
18    that you disputed that this conversation was accurate or  
19    complete?

20    A     I remember this statement, yeah.

21    Q     Okay. And do you remember reviewing the conversation  
22    that the SLED agent provided you to look at?

23    A     I think so, sir.

24    Q     And isn't it this conversation?

25    A     It look similar to it. It been so many years I can't

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1     recall. I ain't saying that's the exact words or not.

2     Q     Okay. And so you stated that when you wrote I did kill  
3     Pat that you meant -- that it was a mistake?

4     A     Yeah.

5     Q     That you meant to say I did not kill Pat?

6     A     Yes, sir.

7     Q     Okay. And then Ms. Hooker in response to your  
8     statement that I killed Pat, she said boy, take it with you.  
9     It's the last line on that page of Plaintiff's Exhibit 1.

10    A     Okay. I see that.

11    Q     Okay. In your opinion, what was Ms. Hooker referring  
12    to?

13    A     I don't have the slightest idea.

14    Q     And today as you testify after you've had an  
15    opportunity for five years to think about it, you still have  
16    no idea what she was referring to?

17    A     I don't --

18                MS. COLEMAN: Your Honor, it calls for  
19    speculation.

20                THE COURT: Well, I'll let him explain. I note  
21    your objection. Go ahead.

22    BY MR. KAZMIERSKI:

23    Q     So after five years of having the opportunity to think  
24    about it and being deposed, being interviewed by SLED, and  
25    now here today, you still have no idea?

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1     A     Like I say, she say boy, take it with me. I don't know  
2     what she mean, but that was her thoughts not mine.

3     Q     Okay. Is it possible that she was saying you should  
4     keep your statement that --

5                 MS. COLEMAN: Objection, calls for speculation.

6                 THE COURT: Yeah. I'm going to sustain that  
7     objection. Okay.

8                 MR. KAZMIERSKI: Thank you, Your Honor.

9                 THE COURT: Go ahead.

10     BY MR. KAZMIERSKI:

11     Q     Now, immediately after Ms. Hooker's statement that she  
12     said boy, take it with you, you wrote -- it's on the second  
13     page there if you want to look at it. It says my bad  
14     because my computer acting up.

15     A     Yeah. The computer was acting up at the time. I  
16     really didn't -- I really -- like I say, I was at work  
17     trying to do both jobs and then pay attention to kids and I  
18     was telling her my computer acting up. I had to go. Talk  
19     to you later. As far as that last statement she wrote, I  
20     ain't even seen that. I ain't pay no attention to that.

21     Q     Okay. Specifically, what did the computer do during  
22     this conversation?

23     A     You know how the internet be on or down sometime, it  
24     was acting up.

25     Q     Okay. So was there significant periods, lapses during

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1     this conversation where you were typing back and forth with  
2     her and then the internet went down?

3     A     Possible.

4     Q     Do you recall if you mentioned that there was computer  
5     problems during this conversation with Ms. Hooker when you  
6     wrote your voluntary statement with SLED?

7     A     I don't think so.

8     Q     Okay. And I asked you about the computer problems that  
9     you were having during this conversation, during your  
10    deposition. Do you recall that?

11    A     I can't recall.

12    Q     You don't remember talking about the computer problems?

13    A     I can't recall.

14    Q     Okay. Is it fair to say that the first person that you  
15    informed that you were having computer problems during this  
16    conversation was me during our deposition or your  
17    deposition?

18    A     I can't recall.

19    Q     But we know you didn't tell SLED in your voluntary  
20    statement that you were having computer problems?

21    A     No.

22    Q     You didn't correct?

23    A     Not in the statement I didn't.

24    Q     Okay. You said you made a mistake?

25    A     I made a mistake.

1     Q     After this conversation with Marcella -- you were  
2     Facebook friends with Marcella Curry Hooker at one point;  
3     correct?

4     A     Yeah.

5     Q     And after this conversation you took the step of, I  
6     think the term is, unfriending her on Facebook; is that  
7     correct?

8     A     I can't recall.

9     Q     Do you still use Facebook?

10    A     At times.

11    Q     Do you know if Marcella Curry Hooker is a friend of  
12    yours on Facebook?

13    A     I have thousands of friends. I don't know. I couldn't  
14    tell you if she is or not.

15    Q     You still have the deposition in front of you?

16    A     (Nods head in the affirmative.)

17    Q     Okay. Would you turn to page 39 for me?

18    A     I'm there.

19    Q     Okay. Line 15 I asked, so you don't communicate with  
20    her over the computer or telephone?

21    A     No.

22    Q     What was your response?

23    A     No.

24    Q     And I asked you but you did previously; correct?

25    A     At one time.

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1     Q     Well, read your answer out of your deposition, line 19?

2     A     I've got in here yeah.

3     Q     And you said you used Facebook, right?    In line 21 your  
4     response was yes, sir; is that correct?

5     A     Yes, sir.    Yeah.

6     Q     And then I asked you do you still use Facebook?

7     A     At times.

8     Q     And are you friends with Marcella Curry Hooker on  
9     Facebook?

10    A     (Witness pauses)

11    Q     It's the last line on the page, Mr. Williams?

12    A     I got, no.

13    Q     And then on line -- page 40, line 10, I asked you did  
14    you unfriend Marcella Curry Hooker on Facebook?

15    A     I got yeah on it.

16    Q     And your answer was yeah?

17    A     Yeah.

18    Q     But today you couldn't recall whether you had  
19    unfriended her; correct?

20    A     Yes, sir.

21                    MS. COLEMAN:    Your Honor, I'm sorry to interrupt  
22    but I don't think these have been introduced into evidence  
23    yet; is that correct?    The deposition transcript of what  
24    he's reading from.

25                    THE WITNESS:    Sure didn't.    He didn't give me one.

2 COURT REPORTER: Judge, do you want the transcript  
3 marked as a Court's Exhibit or Plaintiff's 2.

6 MS. COLEMAN: I don't have an objection, Your  
7 Honor. I just wanted to be sure that, you know, it --

10 COURT REPORTER: Plaintiff's 2 is the Daryl  
11 Williams deposition.

14 (Plaintiff's Exhibit No. 2,  
15 deposition of Daryl Williams, was marked and entered.)

17 Q So after this conversation on September 27th, 2011,  
18 when did you realize that you had written a statement, an  
19 incorrect statement according to you, that I did kill Pat?

22 Q Okay. Why did you unfriend Marcella Curry Hooker?

23 A Because she trying to cause problems in my life and  
24 knowing that I didn't do that. That's the reason I probably  
25 unfriend her, knowing I didn't do nothing wrong. I've

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1     always been a family man, do anything for the family I can.  
2     Ain't hurt nobody -- wouldn't hurt nobody in the world. And  
3     she trying to stir up stuff. She trying to stir up  
4     something that I didn't do.

5     Q     So you unfriended her after this conversation?

6     A     Probably did.

7     Q     But you wouldn't have been aware that -- what was she  
8     stirring up in your life? What problems was she causing?

9     A     She just trying to cause problems you know, like when I  
10    made a mistake on Facebook when I put I did kill Pat. I  
11    mean, after I put -- I meant to put I did not. And since  
12    she was like trying to carry it forward in that, I felt like  
13    I ain't need to talk to her.

14    Q     Okay. But you didn't realize that you had made a  
15    mistake until almost a year later; right?

16    A     Like I say, I used to be on the internet and when I  
17    found out that I made a mistake, that's when SLED came to me  
18    and recognized it. And that's when I knew about it. I did  
19    that then.

20    Q     And when SLED come to you?

21    A     When I made this statement, right?

22    Q     October 16th, 2012?

23    A     I don't know.

24    Q     I mean, it's the date on the statement. You wrote it  
25    right?

1     A     Yeah.

2     Q     But September 2011 a year before you knew you'd made a  
3     mistake, you unfriended Marcella Curry Hooker and didn't  
4     talk to her ever again; correct?

5     A     I unfriend Marcella Hooker when SLED first got in  
6     contact with me, that's when I unfriended her. And they --

7     Q     So you maintained conversations with --

8                 THE COURT: Let him finish.

9     A     And they told me her name, that's when I unfriend her.

10    BY MR. KAZMIERSKI:

11    Q     So you maintained conversations with Marcella Curry  
12    Hooker after this conversation on Facebook?

13    A     No, I didn't.

14    Q     Okay. And you unfriended her after this conversation?

15    A     I probably did.

16    Q     And the reason you did that was because she was causing  
17    trouble in your life?

18    A     Yes, sir.

19    Q     But you didn't know about her causing any trouble in  
20    your life until over a year later?

21    A     Yes, sir.

22    Q     Okay.

23    A     Until SLED contact me.

24    Q     Okay. And if you look at the last line in this  
25    conversation with Marcella Curry Hooker, it actually says --

Nimmons v State     Daryl Williams - Direct     9/30/16     27

1     you write to her, I holler at you later. Got to do some  
2     work now?

3     A     Yeah. I was at work. Like I say, I'm --

4     Q     Intending to continue having a conversation with her;  
5     correct?

6     A     Cause like I said I made a mistake when I wrote that.  
7     And after SLED recognized the mistake or however the found  
8     out that I made a mistake, that's when I decided not to talk  
9     to her no more.

10    Q     Okay. And based on what you know now the last  
11    conversation you had with Marcella Curry Hooker was one that  
12    you wrote the statement I did kill Pat and you never did  
13    anything after that to correct your mistake with Marcella  
14    Curry Hooker?

15    A     I ain't talk to her no more.

16    Q     You never wrote her on Facebook in that year period  
17    until you'd found out that you'd made a mistake that hey, I  
18    made a mistake. I meant to write I did not kill Pat.

19    A     I ain't talk to her no more.

20    Q     Okay. Mr. Williams, thank you. I don't have any  
21    further questions for you.

22                THE COURT: Wait a minute. Wait a minute. Mr.  
23    Williams, we appreciate it but we've got other attorneys in  
24    her who want to ask you questions.

25                MS. COLEMAN: I've got a few questions for you.

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1     And before I get started, can I just --

2             THE COURT:    But now before you do that now the  
3     statement, did you want that in there?

4             MS. COLEMAN:   Yes, that's what I was going to ask.

5             MR. KAZMIERSKI:   His voluntary statement, yes.  
6     We'll make that Plaintiff's 3.

7             THE COURT:    Well, actually the 1st one is the  
8     Facebook.

9             MR. KAZMIERSKI:   The 2nd is the deposition.

10            THE COURT:    Well, the 2nd one is the deposition.  
11     And the 3rd one would be the SLED voluntary statement.

12            MR. KAZMIERSKI:   Voluntary statement.

13            THE COURT:    Is that correct?

14            MR. KAZMIERSKI:   Yes.

15            THE COURT:    Okay.   Ms. Coleman, do you have any  
16     objection.

17            MS. COLEMAN:   No objection, Your Honor.

18            THE COURT:    Okay.   So Plaintiff's 1, 2, and 3 are  
19     all in without objection.

20            COURT REPORTER:   Yes, sir.

21            THE COURT:    Okay.   All right.   And Plaintiff's 3  
22     is the SLED statement?

23            COURT REPORTER:   Yes, sir.

24                             (Plaintiff's Exhibit No. 3, Daryl  
25     Williams voluntary SLED statement, was marked and entered.)

Nimmons v State     Daryl Williams - Cross     9/30/16

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1                    THE COURT:   Okay.   All right.   All right.   Now,  
2   Ms. Coleman, cross-examination.

3                    MS. COLEMAN:   Thank you, Your Honor.

4                    DARYL WILLIAMS - CROSS-EXAMINATION

5   BY MS. COLEMAN:

6   Q     Good morning.   How are you?

7   A     I'm doing great.

8   Q     I've just got a few questions for you?

9   A     Uh-huh.   (Affirmative response.)

10   Q     You've already testified that what you said in that  
11   Facebook message was a mistake; is that correct?

12   A     Yes, ma'am.

13   Q     And you didn't mean to say I did kill Pat?

14   A     No, I didn't mean that.

15   Q     And the last line of the chat, which he mentioned to  
16   you earlier you wrote my bad because my computer acting up;  
17   right?

18   A     Yeah.

19   Q     And you mentioned that maybe the internet was down or  
20   something was wrong with the computer; right?

21   A     Yes, ma'am.

22   Q     So when you testified a moment ago that you didn't  
23   correct your mistake with her, do you think it could have  
24   been your intention to correct your mistake then during the  
25   chat by saying my computer was messed up.   That's why I said

1     that?

2     A     No, I mean, it was I didn't realize that I wrote that  
3     on there until the SLED was, you know, I thought I had  
4     everything on there right.

5     Q     Okay. But that was a mistake that you made?

6     A     Was a mistake.

7     Q     And you told SLED that this was a mistake in your  
8     statement; correct?

9     A     Yes, ma'am.

10    Q     Did you ever tell SLED that you killed Pat?

11    A     No, ma'am.

12    Q     Did you ever tell the Solicitor's office that you  
13    killed Pat?

14    A     No, ma'am.

15    Q     Did you ever tell the Defendant that you killed Pat?

16    A     No, ma'am.

17    Q     And you told Mr. Kazmierski in the deposition that this  
18    was a mistake too; is that correct?

19    A     Yes, ma'am.

20                MS. COLEMAN: I'm sorry. One moment.

21    Q     You also testified that when you were writing this  
22    facebook message you were distracted by your kids; is that  
23    right?

24    A     Yes, ma'am.

25    Q     And, also, I'll go back to the beginning. When we

Nimmons v State     Daryl Williams - Cross     9/30/16     31

1     started you mentioned that you had returned Pat's car on the  
2     day of the crime?

3     A     Yes, ma'am.

4     Q     Did you borrow Pat's car before?

5     A     No, ma'am.

6     Q     Oh, okay.

7                 MS. COLEMAN: Thank you. No further questions.

8                 THE COURT: Mr. Stevens, any questions?

9                 MR. STEVENS: Yes, Judge.

10                DARYL WILLIAMS - CROSS-EXAMINATION

11     BY MR. STEVENS:

12     Q     Just very briefly. They've touched on it already. You  
13     said that you had your children with you at the time you  
14     wrote your Facebook message; is that correct?

15     A     Yes, sir.

16     Q     And you were typing on your computer while they were  
17     around you?

18     A     Yes, sir.

19     Q     And how old were your children at the time?

20     A     Well, they're college kids.

21     Q     Now they're college kids or at the time?

22     A     I'm saying, I was working at the college Voorhees.

23     Q     I understand.

24     A     Yeah. So a lot of them was in and out of my office at  
25     the same time.

1     Q     All the time?

2     A     All the time.

3     Q     I see.   So it's a pretty busy place where you're at?

4     A     Yes, sir.

5     Q     Even during this conversation?

6     A     Yes, sir.

7     Q     And so you didn't put three little letters in there  
8     before you hit send or whatever it is you did on Facebook;  
9     is that what you're telling the Court?

10    A     Yeah.   Yes, sir.

11                MR. STEVENS:   Court's indulgence.

12                THE COURT:   Take your time.

13    BY MR. STEVENS:

14    Q     And just to be clear, once it was brought to your  
15    attention you notified everybody about it that asked you  
16    that it was a mistake; correct?

17    A     Yes, sir.

18    Q     That includes SLED; right?

19    A     Yes, sir.

20    Q     That includes the Applicant's attorney; correct?

21    A     Yes, sir.

22    Q     And you've been very consistent about that; correct?

23    A     Yes, sir.

24    Q     Mr. Williams you've also been very consistent about not  
25    killing the victim in the case; correct?

Nimmons v State      Daryl Williams - Redirect      9/30/16      33

1      A      Yes, sir.

2      Q      At no time did you ever admit to that; correct?

3      A      No, sir.

4      Q      Aside from the mistake in a Facebook post --

5      A      The only time.

6      Q      Have you ever made any other mistakes in posting on the  
7      Facebook?

8      A      Not as I could recall.

9      Q      But when you type, do you always type exactly what you  
10      mean especially when you're distracted?

11      A      No. I make mistakes in texting right now, today.

12      Q      But the one thing you have been consistent about is  
13      never admitting guilt, when you're fully aware of what's  
14      going on, never admitting guilt to this murder?

15      A      Yes, sir. I never admit that.

16      Q      And when this -- we'll call it a writer's error or a  
17      scrivener's error came to your attention, you corrected it;  
18      didn't you?

19      A      Yes, sir.

20                      MR. STEVENS: Court's indulgence.

21                      THE COURT: Take your time.

22      BY MR. STEVENS:

23      Q      One last thing, Mr. Williams. Would you say it's  
24      friendly conversation with you or causing problems in your  
25      life when someone tries to bring up matters saying he asked

Nimmons v State      Daryl Williams - Redirect      9/30/16      34

1      how is everyone and said you testified against him for the  
2      State and asked for other things. Is that what you would  
3      consider bringing up trouble in your life?

4      A      No, I'm just saying when I told him the reason why I  
5      wasn't talking to Marcella anymore because I felt like she  
6      was trying to cause problems in my life.

7      Q      Okay. So by her asking questions about the past  
8      testimony, would you consider that bringing up problems in  
9      your life?

10     A      Yes.

11     Q      Okay. I got you. Did you ever kill the victim in this  
12     case?

13     A      No, sir.

14     Q      Thank you, Mr. Williams.

15                MR. STEVENS: No further questions, Judge.

16                THE COURT: All right. Anything on redirect?

17                MR. KAZMIERSKI: Just a few questions.

18                THE COURT: Yes, sir.

19                        DARYL WILLIAMS - REDIRECT EXAMINATION

20      BY MR. KAZMIERSKI:

21      Q      You did tell one person that you killed Pat; didn't  
22      you? You sent a Facebook message that said I did kill Pat?

23      A      That's the mistake that I made on Facebook. That's the  
24      only time --

25      Q      You sent that message though; correct?

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1      A      Yeah.

2      Q      It's not three little letters but three pretty  
3      important letters, not; wouldn't you agree?

4      A      I made a mistake.

5      Q      Now, you have consistently said that you made a  
6      mistake?

7      A      Yes, sir.

8      Q      And during our deposition you said the computer was  
9      acting up. And now tell the court what the computer did.

10     A      The internet -- you know how the internet go down and  
11     it come back up, the internet went down.

12     Q      Did it go down as you were typing did and then it went  
13     down and you couldn't finish the rest of the sentence?

14                MR. STEVENS: Judge, I believe this is beyond the  
15     scope of cross-examination. No one got into whether the  
16     internet was up or down at the time on cross.

17                THE COURT: I understand, but I'm going to let him  
18     get into it. I will note your objection.

19                MR. STEVENS: Thank you.

20                THE COURT: Go ahead.

21     BY MR. KAZMIERSKI:

22     Q      Did the internet go down as you were typing the  
23     sentence I did kill Pat. Did it go down right as you were  
24     finishing up the last D on did and then it went down and you  
25     couldn't write the word not?

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1      A      No, it was going down at the end. And like I say I  
2      didn't realize that I wrote that until SLED contact me. The  
3      internet by messing up at the end of the conversation.

4      Q      And you told SLED and you told me that that was a  
5      mistake?

6      A      Yes, sir.

7      Q      And you said I want to correct this. This is a mistake  
8      that I made?

9      A      Yes, sir.

10      Q      But before you did that, you cut off all ties with  
11      Marcella Curry Hooker; didn't you?

12      A      What you mean? I cut her off after SLED was in contact  
13      with me about that statement.

14              MR. KAZMIERSKI: I don't have any other questions,  
15      Your Honor.

16              THE COURT: Anything on recross, Ms. Coleman?

17              MS. COLEMAN: Nothing further.

18              THE COURT: Anything on recross, Mr. Stevens?

19              MR. STEVENS: No, Judge. Thank you.

20              THE COURT: All right. Mr. Williams, you may step  
21      down. Thank you.

22              THE WITNESS: Thank you.

23              THE COURT: All right. Mr. Kazmierski.

24              MR. KAZMIERSKI: We don't have any other witnesses  
25      today, Your Honor.

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1           THE COURT: All right. All right. Any witnesses  
2 on behalf of the State?

3           MS. COLEMAN: No, Your Honor.

4           THE COURT: Okay. All right. All right. Did  
5 y'all want to do any arguments or did y'all want to send me  
6 letters or how did y'all want to handle it?

7           MS. COLEMAN: I wouldn't mind doing a brief  
8 closing argument, unless you'd rather write something?

9           THE COURT: Whatever y'all would rather do.

10          MR. KAZMIERSKI: Judge, we've agreed that we would  
11 write the Court our closing statements.

12          THE COURT: Okay. Y'all can do memos or briefs or  
13 a letter or whatever. How long do y'all want?

14          MS. COLEMAN: Thirty days?

15          THE COURT: Yeah. Thirty days is fine with me.

16          MR. KAZMIERSKI: Would that be enough time to get  
17 the transcript from the hearing back?

18          THE COURT: Well, now, there we go. There we go.  
19 We can go off the record and talk about that.

20                               (Off record discussion with counsel  
21 and the Court.)

22          THE COURT: Y'all talk -- y'all go back and forth.  
23 You can email with Ms. Jordan and then after you get it  
24 y'all can send me an email and let me know. That'll work.

25          MR. KAZMIERSKI: Okay.

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1 MS. COLEMAN: Thank you, Your Honor.

2 THE COURT: Okay. All right. Thank y'all. Thank  
3 you, Mr. Stevens.

4 MR. STEVENS: I appreciate it.

5 THE COURT: Okay. I appreciate.

6 (This proceeding was concluded.)

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## C-E-R-T-I-F-I-C-A-T-E

I, THE UNDERSIGNED HILDA M. JORDAN, CVR-M, OFFICIAL COURT REPORTER FOR THE FIRST JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDING IN THE CAPTIONED CAUSE, IN THE COURT OF GENERAL SESSIONS FOR ORANGEBURG COUNTY, SOUTH CAROLINA, ON THE 30 DAY OF SEPTEMBER, 2016.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



Hilda M. Jordan, CVR-M

May 19, 2017

EXHIBIT A

**From:**

CASE NO. 2012-CP-05-131

Date: Monday, February 6, 2012 6:27 PM



## Darryl Williams

- o he did what he say



## Marcella Hooker

- Q he asked how is everyone and said you testified against him for the state and asked for money

## Darryl Williams

- o i had to there was going to lock my ass up to if i did not
- o i told the true



## Marcella Hooker

- o i told him sometimes we have to do what we have to do to get by



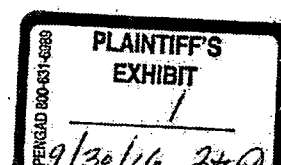
## Darryl Williams

- o i no
- o it hurt me to do it but i did
- o i did kill pat

## Marcella Hooker

- o boy take it with you

FILED  
CLERK OF COURT  
OCT -3  
PM 2:16  
DEPT. OF CORRECTIONS  
JAIL





September 27, 2011

Darryl Williams

- o my bad cuz my computer acting up
- o i holla at u later got 2 do some work im at work no

STATE OF SOUTH CAROLINA  
COUNTY OF BAMBERG

) IN THE COURT OF COMMON PLEAS

)

) CASE NO. 2012-CP-05-131

)

JUAN NIMMONS,

)

)

PLAINTIFF,

)

)

DEPOSITION

)

VS.

)

)

OF

STATE OF SOUTH CAROLINA,

)

)

DARRYL C. WILLIAMS

)

DEFENDANT.

)

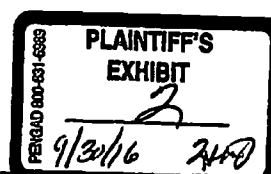
)

ORIGINAL

THE DEPOSITION OF DARRYL C. WILLIAMS WAS  
TAKEN BEFORE SUESAN L. RICHARDSON, A NOTARY PUBLIC IN AND  
FOR THE STATE OF SOUTH CAROLINA, COMMENCING AT THE HOUR OF  
9:55 A.M., FRIDAY, OCTOBER 16, 2015, AT THE LAW OFFICES OF  
WILSON & LUGINBILL, L.L.C., 3056 RAILROAD AVENUE, BAMBERG,  
SOUTH CAROLINA.

REPORTED BY  
SUESAN L. RICHARDSON

FILED  
BAMBERG COUNTY  
2016 OCT -3 PM 2:18  
JAMES H. HARRIS  
CLERK OF COURT  
BAMBERG, SC



# APPEARANCES

## FOR THE PLAINTIFF:

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Post Office Box 1150

Bamberg, South Carolina 29003

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## Plaintiff's

1 Yahoo Mail Exchange between Darryl Williams

and Marcella Hooker

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\*DIGITALLY RECORDED AUDIO RETAINED FOR TWELVE (12) MONTHS

FROM DATE OF CERTIFICATION.

The deposition of DARRYL C. WILLIAMS is taken in accordance with provisions of the circuit court rules for the purpose of discovery or for use as evidence, or for both purposes, and all questions as notice are waived.

It is stipulated that all objections will be reserved until the time of trial, with the exception of objections as to the form of the question.

It is stipulated that the witness waives the reading and the signing of the deposition.

1992 1993 1994 1995

DARRYL C. WILLIAMS, having first been duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION

BY MR. KAZMIERSKI:

Q Good morning, Mr. Williams. My name is Janek Kazmierski and I represent Juan Nimmons in a post-conviction relief matter that he's filed, and we're going to take you're deposition this morning.

**A**      **Okay.**

Q There's a few rules that we have to go over before we get started. First, the madam court reporter is taking down everything that we say by microphone. So, I need verbal responses. Lots of times when we get into

1 conversation, we shake our head no or yes, but she can  
2 only record what we say.

3 A Okay. No problem.

4 Q Okay. Second is, it gets garbled and difficult to  
5 record if we talk over each other. So, let me finish  
6 my question first, and in the same return, I'll let you  
7 finish your answer before I start asking my next  
8 question.

9 A All right.

10 Q Okay. If you don't understand a question, please let  
11 me know. I will re-ask it. I will rephrase it. I'll  
12 do whatever it takes to make sure that you understand  
13 the question that I'm asking.

14 A No problem.

15 Q Because if you answer a question, I'm going to assume  
16 that you understood it. Is that fair?

17 A I feel you.

18 Q Okay. I don't think this deposition should take too  
19 long today, but if any point you need a -- take a  
20 break, you need to use the restroom, you need something  
21 to drink, just let me know and I'll be glad to  
22 accommodate you.

23 Before we started here or right as we started, the  
24 court reporter gave you an oath to testify and tell the  
25 truth. Do you understand that you're under oath?

1 A Yes, sir.

2 Q Have you ever had your deposition taken?

3 A I think I did one time.

4 Q And what was that involving?

5 A I think around the same thing here.

6 Q You had a deposition taken or you -- where you wrote a  
7 statement or --

8 A I wrote a statement back in '95 as I recall and I ain't  
9 -- I think, I ain't sure, I think I did one of them  
10 too.

11 Q Okay.

12 A It's been -- it's been, like I said, it been over 20  
13 years.

14 Q Okay. Any reason you can't give me complete and  
15 truthful answers today?

16 A No.

17 Q Okay. Are you under the influence of any medication or  
18 alcohol this afternoon?

19 A No.

20 Q Okay. What's your full name?

21 A Name is Charles Darryl Williams.

22 Q Do you have any aliases or other names that you go by?

23 A No.

24 Q Do you ever use the name 'Heavy D'?

25 A Well, that was my street name back the day.

1 Q Okay. When -- so back in 1998 would you go by the name  
2 Heavy D?

3 A That was just a street name they called me back then.

4 Q Okay. So, some people knew you as Heavy D?

5 A Yeah.

6 Q What's your date of birth?

7 A

8 Q Do you own a cell phone?

9 A Yeah.

10 Q What's your cell phone number?

11 A It's

12 Q Okay. Who -- who is your cellular provider?

13 A Straight Talk.

14 Q What's your current address?

15 A It's Willoh, W-I-L-L-O-H, Street Denmark, South  
16 Carolina.

17 Q One more time on the spelling. W-I-L-L-O-W?

18 A Yeah.

19 Q Willow?

20 A Yeah, Willow.

21 Q Okay. And who lives with you there?

22 A My aunt and my cousin.

23 Q What's her name?

24 A Elza Wrice.

25 Q Can you spell the first name?

- 1 A It's E-L-O-Z. I'm not sure. I know it's Elozora.
- 2 Q Elzora?
- 3 A Yeah, Elzora Wrice.
- 4 Q Okay, Wrice. How long have you lived at 55 Willow?
- 5 A Ever since last year, round November last year.
- 6 Q So, November 2014?
- 7 A Yeah.
- 8 Q Okay. Prior to Willow Street, where did you live?
- 9 A At Whirlwind Road.
- 10 Q Whirlwind?
- 11 A Yeah.
- 12 Q Is that in Denmark too?
- 13 A It's in Olar, South Carolina. Govan.
- 14 Q Okay. Are you married?
- 15 A Yes, I am. Separated. Not separated but just not
- 16 together.
- 17 Q Okay. And what is your wife's name?
- 18 A Gwendolyn Williams.
- 19 Q Gwendolyn?
- 20 A Yeah.
- 21 Q Where does she live?
- 22 A Whirlwind Road.
- 23 Q Okay. Do you have any children?
- 24 A Not by her.
- 25 Q Who do you have children with?

- 1 A I have a child by Tanya Sherman.
- 2 Q Where does Tanya Sherman live?
- 3 A She in Denmark.
- 4 Q What's her address if you know it?
- 5 A I don't know.
- 6 Q How old is your child?
- 7 A Dyara is 22.
- 8 Q First name is Dyara?
- 9 A Dyara. Yeah, D-Y-A-R-A Williams.
- 10 Q And you said she's 22?
- 11 A Uh-huh (affirmative).
- 12 Q Where does she live?
- 13 A She goes to school at South Carolina State.
- 14 Q Okay. Were you and Ms. Sherman ever married?
- 15 A No.
- 16 Q When did you marry Gwendolyn?
- 17 A 2010.
- 18 Q And when did you and Ms. Sherman separate or break up?
- 19 A Many years ago. I can't recall that.
- 20 Q Was it before or after 1998?
- 21 A It was after. I think it was -- it was after. I'm not
- 22 sure. I can't recall. I'm not sure.
- 23 Q Do you -- okay, are you currently employed?
- 24 A Yes.
- 25 Q Where do you work?

- 1 A I work at Piggly Wiggly in Denmark.
- 2 Q And what do you do there?
- 3 A I'm a meat cutter.
- 4 Q How long have you worked there?
- 5 A I've been back there ever since of March of this year.
- 6 Q You've been there about what, five months maybe?
- 7 A Something like that.
- 8 Q Six months? Where'd you work prior to Piggly Wiggly?
- 9 A IGA in Barnwell.
- 10 Q And how long did you work there?
- 11 A About a year and a half.
- 12 Q And did that take you up to March of this year?
- 13 A Yeah.
- 14 Q Why did you leave IGA?
- 15 A More money.
- 16 Q More money?
- 17 A Uh-huh (affirmative).
- 18 Q Prior to IGA where'd you work?
- 19 A Piggly Wiggly and Voorhees College.
- 20 Q At the same Piggly Wiggly where you work now?
- 21 A Yeah.
- 22 Q And what did you do at Voorhees College?
- 23 A I was a resident coordinator.
- 24 Q How long did you work there?
- 25 A Three years.

1 Q And why did you leave Piggly Wiggly if you remember?

2 A Well, I was working Piggly Wiggly and Voorhees College  
3 at the same time. I left both of them and I went to  
4 IGA.

5 Q Was that more money again?

6 A Yeah. And I needed more time for family.

7 Q Okay. Back in August 1998, where did you work?

8 A I think I was at Precision Platoon. It's one of those  
9 machine shop.

10 Q Precision, what was it?

11 A Platoon.

12 Q Precision Platoon?

13 A Yeah.

14 Q Was that in Denmark?

15 A Yeah.

16 Q What was your job title there?

17 A Machine operator.

18 Q Were you paid hourly?

19 A Yeah.

20 Q Do you remember your hourly wage?

21 A No, I can't remember.

22 Q How about in September 2011, do you know where you were  
23 working at that time? That would have probably been  
24 Voorhees and Piggly Wiggly; right?

25 A Yeah.

1 Q What -- so you were a resident coordinator at Voorhees  
2 and what were you doing at Piggly Wiggly?

3 A Just meat cutter still.

4 Q Okay. What was your schedule at Piggly Wiggly back in  
5 September of 2011?

6 A It -- it varies. Well, okay. I worked at the morning  
7 at Piggly Wiggly and the afternoon I work at Voorhees.  
8 I work for Voorhees from 4:00 to 12:00.

9 Q Four to midnight?

10 A Yeah.

11 Q What were your responsibilities at Voorhees College?

12 A Make sure the dorms were secure, safe for the kids, and  
13 no alcohol, drugs in the dorm at the time.

14 Q Were you regularly using the computer while you were  
15 working there at Voorhees?

16 A Yeah.

17 Q Was that your own computer?

18 A No.

19 Q That was a computer that Voorhees College provided?

20 A Yeah.

21 Q And have you ever been treated for alcohol or substance  
22 abuse?

23 A Yes.

24 Q Tell me about that.

25 A I been treated for rehab. I was in there a period of

1 time I was using drugs. The first time I went to I to  
2 went because of my job. I -- I went just try to save  
3 my job. I ain't went for myself.

4 Q When was that?

5 A That was back 80s.

6 Q Okay.

7 A Then last time I went right after I went to court for  
8 one, I think I went to rehab again.

9 Q So, back in 1998 you went to rehab again?

10 A '98/'99 one of them because I stayed in jail for child  
11 support for like 60 something days.

12 Q And so those were the two times you been to rehab?

13 A Yeah.

14 Q Why -- what were you -- why did you go to rehab?

15 A I -- I was -- I was addicted to drugs.

16 Q Any drug in particular?

17 A Crack cocaine.

18 Q And you already mentioned that you were in jail for  
19 child support. Have you ever been arrested or  
20 convicted of a crime?

21 A Yes, but I ain't never been convicted for -- I had  
22 crack cocaine charge on me but it got throwed out up  
23 here in here.

24 Q And then the child support?

25 A I went -- after I went to -- went to the rehab and came

1 out I was good. Honestly, I got the chance to pay it,  
2 I was alright.

3 Q So --

4 A I had to save it.

5 Q -- okay, so you've never been convicted of a crime?

6 A No, no. I ain't never been convicted of a crime.

7 Q When did you -- when were you arrested for the crack  
8 cocaine possession?

9 A It's back in the 90s. I know it was in the 90s. I'm  
10 not exactly sure what year.

11 Q You know if it was before or after 1998?

12 A I think before. I'm not sure. I think before.

13 Q How long do you think you were addicted to crack  
14 cocaine?

15 A Ten more years.

16 Q Do you know Juan Nimmons?

17 A It's my cousin.

18 Q Describe your relationship with Juan Nimmons.

19 A Well, during that period of time his mother -- and  
20 well, my family and his family we was real close and my  
21 family didn't have any -- that much money so his mother  
22 use to like, take care of me just like she would take  
23 care of him, you know, so I took her as a mother just  
24 like my mother take care of me. So, she was a good  
25 woman.

1 Q So, you -- so, you knew Juan Nimmons mother, Zola  
2 Robinson; correct?

3 A Yeah.

4 Q And she went by Pat; is that right?

5 A Pat, yeah.

6 Q Okay. At the time of her murder, do you know if she  
7 was employed?

8 A Yeah, she was employed at Phoenix.

9 Q And Phoenix is here in Bamberg?

10 A Here in Bamberg.

11 Q Do you know what kind of hours she worked?

12 A No.

13 Q No idea?

14 A She worked in the morning, she ain't had but one shift,  
15 she worked from the morning to the afternoon and ain't  
16 had but one shift.

17 Q You knew what time she had to leave to get to work?

18 A No.

19 Q Do you recall the night that Zola Robinson was  
20 murdered?

21 A I recall the morning.

22 Q Okay. Do you know the date?

23 A No.

24 Q If the police report said August 6th was -- it went  
25 from August 6th to August 7th, 1998; does that sound

1 correct?

2 A Possible chance, I'm not sure.

3 Q Okay. Well, why don't you tell me what you remember  
4 from the evening August 6th going into the morning when  
5 you returned the vehicle -- Ms. Robinson's vehicle.

6 A That's it. I told the truth and I still got the truth  
7 in my head. Well, when I got off work that afternoon  
8 my house, where I stayed at, a lot of drug dealers used  
9 to hang around there. In that period of time, Butch  
10 came around there and some dudes that was around there  
11 selling drugs let Butch or Juan, whatever his name,  
12 carry a dime piece of dope and he went back -- he went  
13 on back around the corner. And maybe an hour or  
14 something later, he came back around with some money  
15 and he paid some people off he owed and then he brought  
16 him something and then he left again. And so, I ain't  
17 -- I ain't paid them no more attention. Later on that  
18 night he came back again, the only thing I saw him  
19 doing funny was he walked all the way down -- because  
20 we use to hang on the corner -- house on the corner --  
21 he be's walked down to the end of the road, looked down  
22 the road and came back. And that's the only thing, you  
23 know, I see him doing specific that night.

24 Q Why was that funny to you?

25 A Because he usually don't do that. That's the only

1        thing I see him doing different besides just sitting  
2        down being quiet because he always be quiet. He ain't  
3        talk to too many people.

4    Q    What time did you get off of work on August 6th?

5    A    It had to be around three, four o'clock, something like  
6        that.

7    Q    After -- after you got off work, did you go to your  
8        house or did you --

9    A    Yeah, go to my house.

10   Q    Okay. Did you ever go over to Sandra Gordon's house?

11   A    That's the house on the corner. I say everybody be  
12        hanging on the corner? That's the house everybody be  
13        hanging at. On the corner, it's like a corner street,  
14        where everybody use to hang there.

15   Q    Your voice and your demeanor has changed a little bit.  
16        Are you nervous today?

17   A    I mean, I ain't -- long ago -- when I have -- when I  
18        have these memories and I guess I -- I went through a  
19        whole lot in this year, going up life, you know. Still  
20        going through different things in life but far as doing  
21        anything else, I'm good. Before I changed a little  
22        bit, yeah.

23   Q    Okay. Do you remember approximately what time you came  
24        in contact with Juan Nimmons the first time on August  
25        6th?

1 A Well, I said at my house -- he came -- I came -- after  
2 I got off work, that next day, when they was looking  
3 for him I got off -- when I went -- after everything  
4 was over with and I talked to the police and  
5 everything, I went and got my check from the job and I  
6 was going to my house to get my little tube to use, he  
7 came to the door and asked me for a cigarette and I  
8 give him a whole pack of cigarettes and after he went  
9 then I went and call the police and tell them I just  
10 seen him. They was looking for him then.

11 Q Okay. Well, my question is, do you remember when you  
12 saw him first --

13 A That's the first time.

14 Q -- on August 6th?

15 A The first time -- that's -- well, that what I'm saying.  
16 The first time, that's what I'm saying, when I got off  
17 work that day he credited the little dime piece of  
18 dope.

19 Q He did what? He --

20 A Credit a piece of dime dope.

21 Q Credited.

22 A Yeah.

23 Q So, he -- so, he bought some -- some crack cocaine --

24 A He didn't buy it. He credited it.

25 Q He said he was going to pay the person later?

1 A Yeah. Yeah. That's my first time seeing him because I  
2 had worked that day.

3 Q Okay. And then you said that he came back at some  
4 point. Did he go smoke that crack cocaine?

5 A I think -- I think he came and smoked it. He went and  
6 smoked it.

7 Q Okay. And then -- and then he was gone for a period of  
8 time?

9 A Yeah.

10 Q And he returned again?

11 A Yeah.

12 Q Do you know approximately what time he returned?

13 A It had to be like another hour, and hour or two later  
14 on.

15 Q So, maybe five or six?

16 A Round that time, something like that.

17 Q And at that time he had some money?

18 A He had some money then.

19 Q Did he tell you where he got that money from?

20 A No.

21 Q Do you happen to recall what Juan Nimmons was wearing  
22 at that time?

23 A I can't recall.

24 Q So, when he turned -- when he returned with some money,  
25 you don't know where he got that money from?

1 A No, sir.

2 Q You don't know how much he had? Do you know -- so did  
3 he pay off that credit at that time?

4 A He paid -- well, he had owed quite a few people. He  
5 paid, you know, I don't know how much it was because I  
6 ain't got anybody business. I know I saw him hand them  
7 some money. And so that's my intentions of what he was  
8 doing.

9 Q Did -- did he give you any of the crack cocaine that he  
10 purchased?

11 A No.

12 Q Do you recall a polygraph, taking a polygraph back in,  
13 I believe, November of 2012?

14 A Yeah. That's when I -- last time they had found me --  
15 the reason of that was because I was talking to my  
16 cousin on my Facebook and I missed and put 'I did kill  
17 Pat' instead of I did not kill Pat. That's the reason  
18 I had to take that. I testify and say that I made a  
19 mistake that on Facebook.

20 Q Do you remember talking with a polygraph examiner, SLED  
21 agent, John Barnette and telling him that Juan Nimmons  
22 was going to get money from his mother to buy crack?

23 A No, I mean, I ain't tell him. I didn't tell him that.  
24 He was going -- like I say, he left the house. When he  
25 credited the dime, he went round that corner. Far as

1        what he was going to do, I don't worry about that  
2        because I was kind of tired. Well, first I ain't  
3        needed him. I had a lot of friends from the block to  
4        look out for me. So, I don't remember nothing.

5    Q    So, do you think that Agent Barnette just added that,  
6        just made that up?

7    A    I mean, I didn't -- I mean, he had to because I didn't  
8        said that he was going to get money. Not -- not as I  
9        recall.

10   Q    Do you recall telling Agent Barnette that Juan Nimmons  
11        gave -- gave you a piece of the rock he purchased with  
12        the money he took from Zola Robinson?

13   A    No. I can't recall that.

14   Q    So, is that something that Agent Barnette also made up?

15   A    I mean, I didn't say he made it up. I can't recall  
16        saying that.

17   Q    So, you could've said that?

18   A    I mean, I can't recall it.

19   Q    Is there any reason why today your testimony today is  
20        different than the statement here on November 12th?

21   A    No.

22   Q    Or on November 15th, 2012?

23   A    It shouldn't -- I'm saying, it had been 20 years ago  
24        man. Like I said, I -- life -- my life carry me  
25        through some stuff I ain't never been through in my

1 life. My brain ain't always level like it is now. So,

2 I --

3 Q Well, this is actually three years ago that you made  
4 this statement.

5 A Three years, yeah, I know that's three years.

6 Q So, it's not 2 years --

7 A No, it ain't twenty years.

8 Q -- that you gave that statement.

9 A Yeah.

10 Q Those are important facts, aren't they?

11 A Yeah. Yeah.

12 Q Were you telling the truth then or are you telling the  
13 truth now?

14 A I -- I'm trying -- I'm telling the truth all the time.  
15 I can't recall them interview or nothing. What I say  
16 then, I don't know. I'm not sure. If he had give me a  
17 piece then I can't recall that. I don't know if he did  
18 or did not. I can't recall that area right now.

19 Q Okay. On August 6th, 1998, did you use any illegal  
20 drugs?

21 A Did I use any illegal drugs?

22 Q Yes.

23 A Yes, sir. I did.

24 Q And that was crack cocaine; correct?

25 A Yeah.

1 Q Do you recall how many times you used crack cocaine on  
2 August 6th?

3 A No, I can't recall how many times.

4 Q On a typical evening that you were going to use crack  
5 cocaine, how often did you use it?

6 A Every chance I get it. I was a addict.

7 Q If you were going to buy, how much would -- I mean, how  
8 much crack cocaine would a single use be?

9 A A single use, I mean, I -- like I saying every time  
10 crack -- when you using -- when you using -- back in  
11 then when I was using drugs there wasn't no limit. It  
12 wasn't no point in saying, 'I don't want no more,' at  
13 that time.

14 Q How much -- how much did it cost to purchase crack  
15 cocaine at that time.

16 A It -- well, it's between five and ten dollars.

17 Q And five -- between five and ten dollars bought you how  
18 much crack?

19 A How much would it buy you?

20 Q Yes.

21 A A little piece. It ain't much.

22 Q And would that be -- would you use multiple of these  
23 purchases of five to ten dollar purchases in an evening  
24 if you were going to --

25 A Yeah.

1 Q -- get high using crack?

2 A Yeah.

3 Q If you were -- if you were going to use that,  
4 approximately how many times would you use it in an  
5 evening?

6 A Every chance you get. I mean, I'm saying, I just thank  
7 the Lord I don't do that anymore. I try not to focus  
8 on that, what I did back then. I just thank the Lord I  
9 don't do that no more. He done brought me a long ways.

10 Q I'm just trying to get an idea of how much because I  
11 think at trial you said you may have used it eight,  
12 nine times. Does that sound right?

13 A That's probably so. More than that if I can get it,  
14 you know, back then.

15 Q So, that would be -- so, was it -- would it be  
16 reasonable to say you may have spent a hundred dollars?

17 A Well, round abouts, if you add.

18 Q And you said earlier that you got your paycheck the  
19 next day; is that right?

20 A Yeah. The day after that. That's when we found out  
21 the murder, later on that afternoon.

22 Q So -- so where did you get the money to purchase the  
23 crack cocaine?

24 A Where did I get the money?

25 Q Yes.

- 1 A Which one?
- 2 Q On August 6th, 1998, you said you purchased
- 3 approximately a hundred dollars' worth of crack and you
- 4 hadn't gotten your paycheck.
- 5 A It's like that credit. People that I know had buy some
- 6 and give me a piece because I had a stem to use and
- 7 that was -- it was just a way of getting high without
- 8 having money back then.
- 9 Q So -- so, all of the crack purchased you made on August
- 10 6th, 1998, you did so on credit?
- 11 A Credit or someone give it to me.
- 12 Q But Juan Nimmons didn't give you any crack?
- 13 A Like I said, I can't recall if he did or not.
- 14 Q Well, earlier you testified that he didn't.
- 15 A Okay. I can't remember. Like I said, my mind -- brain
- 16 -- I'm telling you the truth. I ain't got nothing to
- 17 hide or nothing on this case. Nothing to hide but - I
- 18 mean, I can't recall.
- 19 Q Did you know that Zola Robinson kept her money in her
- 20 bra?
- 21 A Didn't know.
- 22 Q Any reason why your relatives would know but you
- 23 wouldn't know?
- 24 A Let's see -- my family talked. They been kind of tight
- 25 but I stayed to myself. I did what I did but I never

1 hurt nobody. I go there and do work for my Aunt, Aunt  
2 Bert, Zola's momma. I -- I the only one that come do  
3 all they yard work cause they trust me. I ain't never  
4 stole nothing from them.

5 Q Are you aware that Juan Nimmons had taken items from  
6 Zola Robinson's house and sold them so he could buy  
7 drugs?

8 A Yeah.

9 Q Did you ever steal anything to buy drugs?

10 A No.

11 Q Did you ever steal anything from Zola Robinson?

12 A No.

13 Q How did you come into possession of Ms. Robinson's  
14 vehicle on August 7th, 1998.

15 A Well, I was home in the morning after hanging out that  
16 night. They came and brought the car to my house  
17 looking for Butch, which they knew it was my cousin's  
18 car. So, I got the car and I carried the car back  
19 around to my Uncle Moot, which he dead now, and he took  
20 the keys from me and went back because my Uncle Moot  
21 and my Aunt stayed in the front house and they stayed  
22 in the back house. So, I went to the front house and  
23 give the keys to him.

24 Q When you say you gave them to your Uncle Moot --

25 A Yeah, Williams --

1 Q -- is that William Nimmons?

2 A -- William Nimmons, yeah.

3 Q You said they brought you the car. Who is they?

4 A I think it's Derek and somebody. I forgot the other  
5 dude's name, some drug dealers.

6 Q Do you recall a private investigator from Brother's  
7 Detective Agency coming out and talking to you?

8 A Not off hand.

9 Q She spoke with you, I believe, on July 15th, 2015 and  
10 July 18th, 2015.

11 A July -- here at the store; right? They came to my job.

12 Q Yes, it was at -- at Piggly Wiggly.

13 A Yeah. Yeah.

14 Q So, you recall talking with her?

15 A Yeah.

16 Q Do you recall telling her that Travis brought the  
17 vehicle to you the next morning?

18 A Travis? Travis or Derek. Travis and Derek, one of  
19 them two.

20 Q So, you -- do you know if it was both of them or one of  
21 them?

22 A Well, see I think the one that they went and pick up  
23 was Derek. I think that's the one they went and picked  
24 up was Derek. Like I said, I don't know if both of  
25 them was in the car or like if one of them was driving

1 the car and one pick him up and get in the car and they  
2 left.

3 Q Okay. Did you have any conversations with either Derek  
4 Robinson or Travis?

5 A No. No since -- when they brought the car I say,  
6 'yeah' because they ask me if I'd carry the car back  
7 around there and I said, 'yeah I do it' and that was  
8 it. I got the keys and I carry the car back around  
9 there.

10 Q So, you didn't have any conversations with them?

11 A Not as I know of.

12 Q If you didn't have any conversations with them, why did  
13 you tell William Nimmons that the drug dealers who  
14 returned the car were afraid to return it?

15 A I'm just saying, they know they didn't want to bring  
16 the car around there. They know they didn't want to  
17 carry the car to his momma's house. They know me, they  
18 know. I said the drug dealers scared to bring the car  
19 back around here so they brought the car to me. I told  
20 my Uncle Moot that. So, I got the car and I brought it  
21 back around here.

22 Q This is a statement by William Nimmons dated August  
23 7th, 1998 and it says, 'I saw Derek Williams bring back  
24 my daughters gray Lumina about 6:30-7:00am this  
25 morning. Darryl then came into my house and gave me

1 the keys to the car. Darryl said that the drug dealer  
2 had given the car to bring back because the drug dealer  
3 was scared to bring it back.'

4 A Yeah. I probably told him that, yeah.

5 Q Why was the drug dealer scared?

6 A I don't know. I mean you got -- they know that wasn't  
7 his car. They know that was his momma car, right?  
8 They done kept it all night. So, you know they was  
9 scared to bring it back. They know that wasn't his  
10 car. They know that was his momma's car so that's why  
11 they was scared to bring it back.

12 Q So, did you just assume they were scared to bring it  
13 back?

14 A Yeah. That was assuming. That wasn't no facts.

15 Q When either -- when the drug dealer brought the car  
16 back -- back to your house, they were looking for Juan  
17 Nimmons; correct?

18 A Yeah.

19 Q Did you take the drug dealer home?

20 A No.

21 Q So, when he dropped the car off, the drug dealer,  
22 either Derek or Travis, or both of them, you took the  
23 vehicle immediately to William Nimmons; is that  
24 correct?

25 A Yeah.

1 Q You didn't go anywhere else?

2 A No.

3 Q How did Derek or Travis or both of them -- they didn't  
4 live in Denmark; correct?

5 A They lived on the outskirts of Denmark out in the  
6 countryside. Derek did. I think Travis from Norway, I  
7 think.

8 Q How -- do you know how they got home?

9 A No, I ain't sure. I think somebody picked them up.

10 Q Do you recall writing a statement on August 7th, 1998,  
11 in it saying, 'Derek brought the car to my house.  
12 Derek asked where Butch was and I said I don't know.'

13 A Yeah.

14 Q 'I then took Derek home and then took the car back to  
15 Butch's house and gave the keys to Mr. Nimmons.'

16 A I wrote that? I mean, I --

17 Q Here's a copy of it. You can take a look at it.

18 A Damn. Honestly, this happened 20 years ago. I can't  
19 recall doing that.

20 Q Pretty important detail to be --

21 A Yeah.

22 Q -- to not remember; isn't it?

23 A No, I mean, like I said 20 years ago, far as having  
24 anything to do with the murder, I didn't have nothing  
25 to do with that. I know I had the car in my possession

1       and it was going back home. I feel like it was in a  
2       safe place. If I did take him home, I can't -- all  
3       that night I can't even remember.

4   Q    Okay. Who did you return Zola Robinson's vehicle to?

5   A    Uncle William Nimmons.

6   Q    Did you attempt to return it to Zola Robinson?

7   A    No, I carried it to Uncle -- I carried it to Uncle Moot  
8       - Moot because this is -- this is how -- this is how it  
9       happened. He was doing stuff in our family already,  
10      breaking in houses and doing stuff. So, I know  
11      something's wrong. I know it's wrong to get in the car  
12      anyway so I wasn't going get into that. I was half  
13      scared of Butch already because he gone on jump on me,  
14      just jump me and my friends. So, I wasn't going back  
15      there if he was right there. I wouldn't going back  
16      there carry the car cause he probably would have jumped  
17      on me or something. That's why I give the car to Uncle  
18      Moot. William Nimmons, that's who I give the car to.  
19      I ain't attempt try to go back there.

20   Q    So, you knew it was Zola Robinson's car?

21   A    Yeah.

22   Q    You knew she had to go to work?

23   A    Yeah.

24   A    She --

25   Q    So, you didn't attempt --

1 A use to --

2 Q -- hold on a second. But you didn't attempt to return  
3 it to her?

4 A Yeah, I did, I brought the car to her.

5 Q No, you brought the car to Mr. William Nimmons --

6 A I brought it --

7 Q -- is that correct?

8 A Same thing, that was -- that was -- because that's her  
9 daddy. So, I figured if I give it to him, she'll get  
10 it. I did the best thing I can to my knowledge at the  
11 time.

12 Q Wouldn't it have been faster and easier to just return  
13 it to Ms. Robinson?

14 A No. I did who in my mind I thought I give it to.

15 Q Okay, but my question is, wouldn't it have been faster  
16 and easier --

17 A No.

18 Q -- just to return the car to Ms. Robinson?

19 A No because Uncle Moot was already out the door. That's  
20 why I ain't -- he was already out I give this to Uncle  
21 Moot. He saw my when I got pulling up with the car and  
22 I said I wanted him to know because he was like the  
23 king of our whole family; and I wanted him to know who  
24 had the car. That's why I give the keys to him.

25 Q So, you recall Uncle Moot, or William Nimmons, he was

1 outside and met you outside?

2 A He was that close to the door, yeah.

3 Q And did he come outside to meet you?

4 A I can't recall all of that right now, man. I can't  
5 recall if he came outside or I went in the house or  
6 what.

7 Q Did -- so, you said you returned it to William Nimmons  
8 because he was the king of the family and you wanted  
9 him to know what was going on?

10 A Yeah.

11 Q Did you have a conversation with him about what was  
12 going on?

13 A I -- I told him about the drug dealers had the car and  
14 they was scared to bring it back to him and it wasn't  
15 too much more as I recall right now. I can't -- I  
16 don't know. I don't know if I smoke on that some more  
17 or not.

18 Q But if you had, Mr. Williams, Mr. William Nimmons, he  
19 probably would have put it in his statement; don't you  
20 think?

21 A Yeah. If I'd have said something and, you know, if I  
22 would've he probably would have.

23 Q So, if he didn't put it in his statement other than you  
24 returned the keys to him and you said the drug dealers  
25 were afraid to do so, to return it, that was the extent

1 of the conversation; would you agree with that?

2 A I'm not sure. I mean, that's all he put on there,  
3 that's all -- that's all we talk about.

4 Q But you said your reasoning for why you wanted to  
5 return it to him was because you wanted him to know  
6 what was going on.

7 A Yeah. I want the king, like I said, he -- I wanted him  
8 to know that the drug dealers had his daughter's car.  
9 That's why I give him the keys. That's my family --  
10 that's who I did the right thing and give the keys to  
11 him.

12 Q On August 7th when you cashed your paycheck, did you go  
13 and pay back the drug dealers that you had gotten the  
14 crack on for credit?

15 A I don't know. According if I couldn't find nothing. I  
16 ain't do nothing that next -- couldn't find nothing  
17 rest of that day. The town was like dead. It was  
18 shocked for what happened. So, I can't recall -- I  
19 can't recall.

20 Q You recall testifying at Juan Nimmons' trial?

21 A Yeah.

22 Q Why didn't you tell the solicitor that you were scared  
23 of him and that he had jumped you and all that other  
24 stuff?

25 A I am -- I didn't lie -- I am. I was.

1 Q I'm sorry, what's the answer?

2 A I said, I am, still is today.

3 Q Well, my question is why didn't you tell that when you  
4 testified?

5 A Oh, why didn't I?

6 Q Yes.

7 A Oh, I can't recall.

8 Q You recall telling the solicitor on your direct  
9 examination that you used to see him most every day?

10 A Yeah.

11 Q And that you worked different jobs, but you almost saw  
12 him almost every day? But today you tell me that you  
13 were scared of him at that time, right?

14 A I am, yeah.

15 Q Any reason why you can think that you wouldn't have  
16 told the solicitor that?

17 A No, I can't think of none right now.

18 Q You think it would have been important to tell the  
19 solicitor that? That you're scared of him?

20 A Can't recall.

21 Q At the time you returned the vehicle to William  
22 Nimmons, did you know Zola Robinson had been murdered?

23 A Didn't know.

24 Q Is that why you didn't return it to her?

25 A Nope. I didn't know. I found out that Zola Robinson

1 was killed when I left my house and went to my mother's  
2 house. I was going to my mother's house. My momma was  
3 leaving coming over to William Nimmons' house because  
4 they said they found Pat dead. So, I said I might as  
5 well get in the car with her right now because I  
6 carried the car round there. So, I got in the car and  
7 my momma went right on around there too.

8 Q Who's Sandra Jordan?

9 A She the girl that stayed on the corner.

10 Q So, you spent some time with her on August 6th, 1998?

11 A All of us was hanging at her house on the corner.

12 Q And I recall your testimony, you said you stayed at her  
13 house until approximately 5:00a.m. on August 7th?

14 A We stayed up all not, yeah. A whole lot, a bunch of  
15 us.

16 Q Were you involved in a romantic relationship with Ms.  
17 Jordan?

18 A No, just friends.

19 Q To your knowledge, did Ms. Jordan use drugs?

20 A Yes, she did.

21 Q Crack cocaine as well?

22 A Yes, she did. At that time she did.

23 Q Do you have any recollection of what Ms. Jordan was  
24 wearing that night?

25 A No.

1 Q Did you use drugs with Ms. Jordan on the night of  
2 August 6th, 1998?

3 A Probably did.

4 Q Did you know that Sandra Jordan failed a polygraph  
5 about a week after the murder of Zola Robinson?

6 A No.

7 Q The polygraph examiner asked her, 'Last August 7th, did  
8 you go into Zola Robinson's trailer?' Next question  
9 is, 'Did you enter Zola Robinson's trailer after she  
10 was dead?' And the third question is, 'Are you  
11 withholding any information about the beating death of  
12 Zola Robinson?' And the examiner determined that there  
13 was deception indicated. Do you know if Sandra Jordan  
14 had anything to do with the murder of Zola Robinson?

15 A No.

16 Q To the best of your knowledge was Sandra Jordan  
17 involved in the murder of Zola Robinson?

18 A No.

19 Q What makes you so sure?

20 A She wouldn't do nothing like that. She had nothing to  
21 do with that. I know she didn't.

22 Q Are the two of you covering for each other?

23 A No, don't have no reason to.

24 Q Who is Beverly Whetstone?

25 A That's -- that's Juan Aunt.

1 Q What's her relationship to you?

2 A Cousin.

3 Q Do you know that she wrote a statement on February 2nd,  
4 1999?

5 A I -- I think all -- everybody wrote a statement. I  
6 think all my family members that was close.

7 Q In that statement she stated, 'I got up at 4 a.m. and  
8 saw what appeared to be a lady going into Zola's  
9 trailer.' Do you have any idea who that lady was?

10 A No.

11 Q Do you believe that lady could have been Sandra Jordan?

12 A I don't know.

13 Q You mentioned that Juan had money between -- he came  
14 back with some money and you don't remember how much he  
15 had; right?

16 A No.

17 Q And that was probably what, 5:00 or 6:00 p.m. you said;  
18 right?

19 A Yes.

20 Q Do you think that Juan Nimmons' mother, Zola Robinson,  
21 would have given him that money?

22 A I can't recall. I don't know.

23 Q Do you think that -- when do you think that Zola  
24 Robinson was murdered?

25 A I think she been murdered when -- when he came back

1 with that money. I think she was murdered then.

2 That's what I think now. I ain't sure.

3 Q Do you know Marcella Curry Hooker?

4 A That's the one I was talking to on Facebook and made a  
5 mistake and said I did kill Pat, in which I meant to  
6 put I didn't kill Pat.

7 Q Okay. How do you know her?

8 A She my cousin from Philadelphia.

9 Q How long have you known her?

10 A I known her ever since we was little kids growing up.  
11 She used to come down to her Grand mama's house.

12 Q How would you describe your relationship with her?

13 A Well, we family. That's it.

14 Q Friends?

15 A Family, yeah.

16 Q Is she someone you trust?

17 A Right now, now-a-days, you can't hardly trust nobody in  
18 life.

19 Q And the reason you don't trust her is because she  
20 reported this conversation that y'all had?

21 A No. That ain't -- no, that ain't it. Like I said, the  
22 Lord taking care of me in life now. So, I live my life  
23 for which way the Lord sent me. So, you know, I felt I  
24 trusted my wife and I found out more on that, so, it's  
25 hard to put -- through anybody now.

1 Q How often do you communicate with her?

2 A I don't communicate with her anymore.

3 Q And why is that?

4 A Because I don't have her phone and when she come down  
5 here I see her. I communicate with her. I ain't got -  
6 - I don't hold a grudge with nobody for what they do in  
7 life, nobody.

8 Q So --

9 A You can't go in the Lord's kingdom holding grudges.

10 Q -- so if she visits, you physically have face to face  
11 conversation?

12 A For real. Her grandparents used to come down here and  
13 see us. All of them is deceased now so, she very  
14 seldom come back down here.

15 Q So, you don't communicate with her over the computer or  
16 telephone?

17 A No.

18 Q But you did previously; correct?

19 A Yeah. Yeah.

20 Q And you said you used Facebook; right?

21 A Yes, sir.

22 Q You still use Facebook?

23 A At times.

24 Q Are you friends with Marcella Curry Hooker on Facebook?

25 A No.

1 Q Do you recall telling the investigator from Brother's  
2 Detective Agency that you still communicate with her on  
3 Facebook?

4 A What year that was?

5 Q This is July 2015?

6 A No, I can't recall that.

7 Q Do you recall the last time you communicated with her  
8 on Facebook?

9 A Probably when I was working at Voorhees.

10 Q Did you unfriend Marcella Curry Hooker on Facebook?

11 A Yeah.

12 Q Do you have an email account?

13 A Yeah.

14 Q What's your email username?

15 A My -- darryl112311@yahoo.com.

16 Q Do you own a computer?

17 A Do I own one? My cell phone, that's it.

18 Q I'm sorry. What's that?

19 A My cell phone -- cell phone.

20 Q Just your cell phone?

21 A I have a tablet, but I don't hardly use that too much  
22 no more.

23 Q Okay. The computer that you were using to communicate  
24 with Marcella Curry Hooker back on September 27th,  
25 2011, that was provided by Voorhees College?

1 A Yeah.

2 Q Do you recall the conversation you had with her on the  
3 -- on the computer on September 27th?

4 A The -- the -- the thing show it to me one time and  
5 before -- I made a mistake on that writing, that was  
6 it. I remember talking to her. I think that's one of  
7 the last times I talked to her.

8 Q The agent showed you the conversation?

9 A Yeah. Yeah.

10 Q Tell me about that conversation.

11 A She was asking -- she said that Butch said I testify  
12 against him on the state and I told her all I did I  
13 told the truth cause I didn't -- I meant to put I did  
14 not kill Pat but I put I did kill Pat. I told them I  
15 told the truth. Said I was wrong for testifying  
16 against him or something like that.

17 Q What else do you recall from the conversation?

18 A That's all I can recall right there.

19 Q I want you to take a look at that. Does that look like  
20 the conversation that y'all had?

21 A Yeah, something like that.

22 Q There's two pages there, Mr. Williams. It's just those  
23 first two pages there, sir.

24 A Oh, okay.

25 Q Does that look like the conversation?

1 A That looks like it was it.

2 Q Okay. Might need to get that back. We're going to  
3 mark that as an exhibit.

4 [Whereupon, Defendant's Exhibit No. 1 is marked  
5 for identification.]

6 MR. KAZMIERSKI: Thank you.

7 Q Thank you. Do you recall typing the lines, 'I know, it  
8 hurt me to do it but I did, I did kill Pat'?

9 A I told her I made a mistake and wrote -- wrote that I  
10 said. She was asking about my testifying state. I  
11 said, 'I know it hurt me to testify against my cousin  
12 but I had to tell the truth' because I talked to my  
13 family -- but I made the statement I did, I meant to  
14 put I did not.

15 Q Okay. And she replied, 'Boy, take it with you.'

16 A I don't know what she talking about that.

17 Q You don't know what she meant?

18 A Uh-uh (negative).

19 Q And then you responded by saying, 'My bad cause my  
20 computer acting up. I holla at you later. I'm at work  
21 no.' Probably meant now.

22 A Yeah. Yeah, I'm saying, I'm at work. I'm trying to  
23 pay attention to them kids and look and see what they  
24 doing wrong and trying to be on the computer. That's  
25 why I messed up.

1 Q Well, you said your computer was acting up. What did  
2 it do?

3 A You know how it freeze up sometime? It was doing that.

4 Q So, it froze up right when you was trying to type  
5 'didn't'?

6 A I don't -- I mean, I made a statement saying that I  
7 made a mistake and wrote that; right? And that's all I  
8 was doing there. I know I didn't kill Pat, man.

9 Q I know you wrote a statement that said you made a  
10 mistake, but at the time of this email exchange or  
11 internet exchange you said your computer was acting up  
12 and I'm trying to figure out what your computer did.

13 A It -- it turn out -- the computer at work be locking up  
14 sometime. You know how computer freeze up because it  
15 an old computer Voorhees College have and it be  
16 freezing up sometimes. That's what I was talking  
17 about.

18 Q So, when you were typing back and forth, it froze?

19 A Possibly then.

20 Q So, it wasn't a mistake. It was the computer problem;  
21 right?

22 A I'm just saying I meant to put I did not kill Pat, not  
23 didn't; all right? And I done wrote a statement on  
24 that saying I made a mistake on that. And that's all I  
25 can do. I know I had nothing --

1 Q So, did the computer act up or not?

2 A Yeah, the computer acting up. The computer always be  
3 acting up out there at times because the internet be  
4 freezing up. You know how the internet system be  
5 messing up?

6 Q So, you're trying to tell me today --

7 A What?

8 Q -- that the computer acted up right as you were saying,  
9 'I did not kill Pat'?

10 A Listen, I'm saying I told her that; right? But I'm  
11 saying that was a mistake I made. I meant to say I did  
12 not kill Pat. That was a mistake I made. I own up to  
13 that mistake. A mistake I made on that. Far as  
14 anything else, I ain't got nothing else to do with  
15 nothing now.

16 Q But you're telling me today that the reason it wrote,  
17 'I did kill Pat' --

18 A I didn't say that.

19 Q Let me finish my question. You're telling me today  
20 that the reason you typed 'I did kill Pat' is because  
21 the computer froze up between you typing did and kill;  
22 is that accurate?

23 A I'm -- I'm saying yeah, yeah. I forgot to put the  
24 'not'.

25 Q So, your computer wasn't acting up.

1 A I'm not sure what it was doing, man. I know I didn't  
2 do it. That was a mistake I made. I'm taking that  
3 mistake. A mistake I made on that. I ain't saying it  
4 was the computer. I'm saying it was a mistake I made.

5 Q So, is it fair to say that your next statement, 'My bad  
6 because my computers acting up' was just a lie to  
7 cover?

8 A No, no lie. I ain't have nothing -- I ain't got to  
9 tell no lie about nothing. Don't have nothing to lie  
10 about.

11 Q So, was it true your computer was acting up or not?

12 A I'm not sure. The problem was the computer act up all  
13 the time.

14 Q But this you wrote at the time that you made the  
15 statement. This is the next thing you said. Is it  
16 accurate or not?

17 A I can't recall.

18 Q You don't recall or you don't want to recall?

19 A I can't recall right now, man. How many years that  
20 was?

21 Q Says November 2011.

22 A All right. I can't remember. I can't recall right  
23 now.

24 Q Excuse me, September 2011.

25 A I can't recall what happened at that time. What I know

1 I made a mistake. I said I made a mistake and wrote --  
2 I meant to put not and I ain't put it.

3 Q If you made a mistake, why didn't you simply rewrite  
4 the correct statement to Marcella Curry Hooker?

5 A I ain't realize I made a mistake until people came on  
6 Facebook and told me because I ain't talk to her no  
7 more since then. I ain't realize I made that mistake  
8 on the computer.

9 Q So, you're telling me today that -- then why would you  
10 write 'my bad'? It's hard to keep a story straight  
11 when you ain't got your story straight.

12 A My story straight. I'm just saying.

13 Q Tell me why didn't you just write, 'I did not kill  
14 Pat'?

15 A I'm just saying I -- I said I did not. I did put 'did'  
16 I forgot to put the not.

17 Q Okay. And why wouldn't you simply rewrite it correctly  
18 instead of saying the computer was acting up?

19 A Because I didn't -- because I didn't -- because I  
20 didn't go back and look at what I wrote. Man, I'm  
21 saying, I'm at work, I'm sneaking on the computer --  
22 don't supposed to be on here already, and that's why I  
23 didn't get a chance to go back to my statement that  
24 day.

25 Q But why don't you tell --

1 A How long -- how long will this gone last? I got to go  
2 to work, man.

3 Q We're going to be finished up here in a minute.

4 A All right.

5 Q So, you don't really have any reason why you would have  
6 written, 'my bad because my computer's acting up'  
7 right?

8 A I can't recall it.

9 Q Do you recall taking a polygraph examination concerning  
10 the statements in this email exchange or Facebook  
11 exchange?

12 A Yeah, and I failed because I was nervous and scared --  
13 got -- get -- like right now I got all this going on in  
14 my life already, and I just had coming back on me and  
15 something that I know I ain't got nothing to do with.  
16 I was trying to help out with the families, showing all  
17 my love to my family, which my family always stick  
18 together, and we always gone stick together. You know,  
19 my family know I ain't do this. They know I ain't do  
20 this and they know who did it. So, if I need an  
21 attorney for this, I might need to get one.

22 Q The report -- polygraph report states that the examiner  
23 believed you used counter measures in an attempt to  
24 defeat the polygraph. Did you try to use counter  
25 measures?

1 A No. I told the truth.

2 Q You told an investigator that you thought you failed  
3 the polygraph because you were scared.

4 A Yeah, I was.

5 Q Why were you scared?

6 A Because man, all the questions going back on this again  
7 man. I feel they trying to put something on my life.  
8 Something I know I ain't -- I wouldn't do nothing to  
9 hurt nobody in life far as physical wise. I don't try  
10 to hurt nobody's feelings, worry about them physical.

11 Q Were you scared because you realized you had confessed  
12 to the murder of Zola Robinson?

13 A I'm just saying -- I mean -- I ain't confessed to it.  
14 I ain't confessed to nothing.

15 Q When you typed 'I did kill Pat,' did you realize that  
16 you had confessed to Marcella Curry Hooker that you had  
17 murdered her?

18 A No, that was -- that was -- that was a mistake. That  
19 was a mistake. That was a mistake I said. That was a  
20 mistake.

21 Q Did you enter Zola Robinson's trailer on August 6th,  
22 1998?

23 A No, I didn't.

24 Q Did you enter Zola Robinson's trailer on August 7th,  
25 1998?

- 1 A No, I didn't.
- 2 Q When you wrote 'I did kill Pat,' where you confessing  
3 to the murder of Zola Robinson?
- 4 A That was a mistake I made.
- 5 Q A mistake you didn't realize until much later; right?
- 6 A Like I say, I was at work at that time when I was  
7 writing -- talking to my cousin and I meant to put not  
8 -- did not and I -- and for some reason I didn't put  
9 not and I was at work at the time and I didn't go back  
10 and see it anymore.
- 11 Q And when she wrote back to you 'boy take it with you'  
12 you still didn't realize you had made a mistake?
- 13 A No, remember I was at work at that time. I sure  
14 didn't.
- 15 Q My question is did you realize at that time that you  
16 had made a mistake?
- 17 A No, I didn't realize that then. I didn't even read my  
18 stuff back over again. I didn't realize that. I  
19 realized that when people brought me that paper.
- 20 Q And then you wrote 'my bad' but you didn't even realize  
21 that you had confessed to the murder of Zola Robinson;  
22 right?
- 23 A No, I didn't realize that. I ain't did no confessing  
24 because I didn't do that.
- 25 Q Did you murder Zola Robinson?

1 A No, I did not.

2 Q Okay. I think that's all the questions I have. Mr.  
3 Williams, I appreciate you coming by.

4 A No problem.

5 Q You know, I've got a job to do.

6 A Yeah, I know. I know. You got to do your job.

7 WHEREUPON, THERE BEING NO FURTHER QUESTIONS, THE  
8 DEPOSITION IS CONCLUDED AT 10:50 A.M..

9 THE DEPONENT WAIVES THE READING AND SIGNING OF THE  
10 DEPOSITION.

11  
12 (\*This transcript may contain quoted material. Such  
13 material is reproduced as read or quoted by the  
14 speaker.)  
15  
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25

STATE OF SOUTH CAROLINA )

COUNTY OF BAMBERG )

CERTIFICATE

Be it known that I took the foregoing deposition of DARRYL C. WILLIAMS;

That I was then and there a Notary Public in and for the State of South Carolina-At-Large;

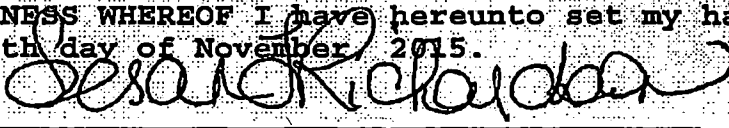
That by virtue thereof I was duly authorized to administer an oath;

That the witness was by me first duly sworn or affirmed to testify the truth, the whole truth, and nothing but the truth, concerning the matter in controversy aforesaid;

The foregoing transcript represents a true, accurate and complete transcript of the testimony given by said deponent after first being duly sworn, at the time and place aforesaid, to the best of my skill and ability; said deposition was reported by method of Stenomask utilizing speech recognition with digital backup. This transcript may contain quoted material; said material is transcribed as read or quoted by the speaker.

I further certify that I am neither employed by nor related to any of the parties in this matter nor their counsel; nor do I have any interest, financial or otherwise, in the outcome of this action.

IN WITNESS WHEREOF I have hereunto set my hand and seal this 14th day of November, 2015.

  
Suesan L. Richardson  
Professional Court Reporter

Notary in and for the State of South Carolina

My Commission Expires: August 3, 2017

**ORIGINAL**



FILED  
BANDER COUNTY  
20 NOV 9 11 2:18  
VOLUNTARY STATEMENT

CASE # \_\_\_\_\_

LEAD # \_\_\_\_\_

|                                              |                                                                                         |                                                          |                              |        |
|----------------------------------------------|-----------------------------------------------------------------------------------------|----------------------------------------------------------|------------------------------|--------|
| LAST NAME<br><u>Williams</u>                 | FIRST NAME<br><u>Charles</u>                                                            | MIDDLE NAME<br><u>Darryl</u>                             | AGE<br><u>47</u>             | D.O.B. |
| NICKNAME/KA                                  | M <input checked="" type="checkbox"/> F <input type="checkbox"/> SSN <u>000-00-0000</u> | STREET ADDRESS<br><u>Java Ave</u>                        |                              |        |
| CITY<br><u>0/00</u>                          | STATE<br><u>SC</u>                                                                      | ZIP<br><u>29243</u>                                      | MAILING ADDRESS IF DIFFERENT |        |
| HOME TELEPHONE                               | WORK TELEPHONE                                                                          | CELL TELEPHONE                                           | OCCUPATION                   |        |
| EMPLOYER<br><u>002483351 CW</u>              |                                                                                         | EMPLOYER ADDRESS                                         |                              |        |
| DRIVER'S LICENSE NUMBER/STATE                |                                                                                         | DATE AND TIME OF INTERVIEW<br><u>10/16/2012 10:15 AM</u> |                              |        |
| LOCATION OF INTERVIEW<br><u>Denmark P.D.</u> |                                                                                         |                                                          |                              |        |
| INTERVIEWING AGENT<br><u>T. S. Harley</u>    | DEPARTMENT<br><u>SLED</u>                                                               | INTERVIEWING AGENT                                       | DEPARTMENT                   |        |

I understand I do not have to say anything, and I volunteer the following information of my own free will, for whatever purposes it may serve. I can not read and write and completed the 5-12 grade in school.

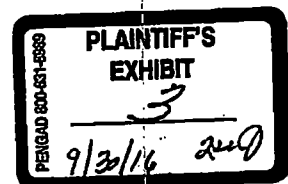
att Darryl Williams reviewed a conversation between myself and my cousin Marcella Hooker Facebook dated September 27, 2011 by Agent Harley of SLED. I do remember the conversation on Facebook with Marcella Hooker, we were talking about trial in which I testify in reference my cousin (Butch) Juan Nimpone. On the conversation with Marcella we were talking about Butch. I made a mistake and said Adid Kill pat But I mean to put in didnt kill pat I told the true about everything.

I have read each page of this statement consisting of 4 page(s), each page of which bears my signature, and corrections, if any, bears my initials, and I certify that the facts contained herein are true and correct.

Date: 10/16/12 Time: 11:35am Charles D. Williams  
Signature of person giving voluntary statement

WITNESS: [Signature] WITNESS: \_\_\_\_\_

I certify that I have been given a copy of this statement consisting of 1 pages.



STATE OF SOUTH CAROLINA  
COUNTY OF BAMBERG

Juan M. Nimmons, #256828,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS  
SECOND JUDICIAL CIRCUIT

2012-CP-05-0131

**RESPONDENT'S MEMORANDUM  
IN SUPPORT OF DENYING  
POST-CONVICTION RELIEF**

FILED  
BAMBERG COUNTY  
JAMES B. HIERS  
CLERK OF COURT  
BAMBERG, SC  
OCT 18 -4 PM 2:59

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on July 17, 2012. Respondent submitted its Return and Motion to Dismiss on October 8, 2012. A Conditional Order of Dismissal was signed by the Honorable Doyet A. Early, III on October 11, 2012, and filed on October 17, 2012, provisionally denying and dismissing the application for post-conviction relief, but allowing Applicant twenty days to set forth specific reasons why this dismissal should not become final. Applicant filed a response asking Judge Early to recuse himself for a conflict of interest. Judge Early issued an Order recusing himself from the case. Subsequently, the Honorable Clifton Newman granted Applicant's Discovery Motion and ordered an evidentiary hearing.

An evidentiary hearing was convened on September 30, 2016, at the Orangeburg County Courthouse before the Honorable Edgar W. Dickson. Both parties waived venue to allow the hearing outside of the Second Circuit. Applicant was present at the hearing and was represented by Mr. Janek Kazmirsky, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman of the South Carolina Attorney General's Office.

## I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Bamberg County. Applicant was indicted at the March 1999 term of the Bamberg County Grand Jury for first degree Murder (1999-GS-05-0028) and Armed Robbery (1999-GS-05-0029). He was represented on the charges by Joshua Koger, Esquire. Applicant proceeded to a jury trial and was convicted. On March 10, 1999, Applicant was sentenced by the Honorable Gary E. Clary to life without parole for Murder and to a consecutive term of thirty years imprisonment for Armed Robbery.

A notice of appeal was filed and an appeal perfected. Following an Anders review, the appeal was dismissed. State v. Nimmons, Op. No. 2002-MO-051 (S.C. Sup. Ct. filed June 13, 2002). Applicant's Petition for Rehearing was denied, and the Remittitur was sent on August 7, 2002.

### 2003-CP-05-0068

The Applicant subsequently filed an application for post-conviction relief on May 1, 2003 (2003-CP-05-0068). The Applicant raised the following issues in his first post-conviction relief application:

1. Ineffective assistance of counsel.
  - a. Failure to submit notice of alibi defense and present alibi witnesses.
  - b. Failure to object to solicitor's closing argument.
  - c. Failure to object to sentence.
  - d. Failure to request a Jackson v. Denno hearing.
  - e. Failure to subpoena Rowland Dowling.
  - f. Failure to move for directed verdict for charge of Armed Robbery.
  - g. Failure to request jury charge on alibi.
  - h. Failure to object to solicitor's pitting of witnesses.
  - i. "...failing to motion to reveal Rule 404(b), S.C.R.Evid., State v. Lyle, evidence."
  - j. Failure to move for continuance.

- k. "...failing to subpoena the coroner/toxicologist as there was not time of death, which could have changed outcome of proceedings because witnesses observed different individuals entering victim's residence this particular night."
2. Ineffective assistance of appellate counsel.
3. Court lacked subject matter jurisdiction on Armed Robbery charge.

The State made its Return on September 11, 2003. An evidentiary hearing was convened on August 8, 2007, before the Honorable J. Michael Baxley. Applicant was present and represented by Sherry Stoney, Esquire. Judge Baxley dismissed the application with prejudice by order dated September 18, 2007, and filed October 4, 2007. The South Carolina Supreme Court denied Applicant's Petition for Writ of Certiorari on September 3, 2009. The Remittitur was sent on September 21, 2009.

#### 2009-CP-05-0200

Applicant filed his second post-conviction relief application on October 2, 2009 (2009-CP-05-0200). In this application, Applicant set forth the following grounds for relief:

1. "Was Petitioner denied his one bite of the apple when PCR counsel failed to [e]nsure that all grounds for relief were raised in Petitioner's prior PCR application and addressed at Petitioner's PCR hearing?"
2. "Was Petitioner denied due process of law and equal protection when trial counsel and PCR counsel failed to challenge the defects in the indictments that allowed Petitioner to be tried and convicted on defective instruments that have unduly prejudiced Petitioner and denied him of his constitutional rights?"
3. "Was Petitioner denied due process of law and equal protection when PCR counsel failed to raise the issue of trial counsel conceding Petitioner's guilt to the jury?"
4. "Was PCR counsel ineffective for failing to raise trial counsel's failure to ask the court that the sentences that were handed down be run concurrent as mandated by S.C. Code Ann. 17-25-50?"

In a Conditional Order dated May 24, 2010, the Honorable Doyet A. Early, III, found that the application should be dismissed based on the statute of limitations and successiveness; Applicant was given twenty days in which to respond. After consideration of Applicant's responses to the

Conditional Order, a Final Order of Dismissal was signed by Judge Early on August 13, 2010, and filed August 17, 2010. Applicant filed a Petition for Writ of Certiorari in the South Carolina Supreme Court. In an order dated September 28, 2010, the Supreme Court dismissed the matter for failure to show an arguable basis why the determination by the lower court was improper pursuant to Rule 243(c), SCACR. The Remittitur was sent on October 15, 2010.

### **2010-CP-05-0205**

Applicant filed a third post-conviction relief application on October 7, 2010 (2010-CP-05-0205). In this application, Applicant set forth the following grounds for relief:

1. Ineffective assistance of appellate counsel.
  - a. "Counsel failed to raise meritorious issues."
  - b. "Counsel acted under conflict of interest."
  - c. "Counsel failed to show-up or attend the PCR hearing."

The Respondent made its Return and Motion to Dismiss on March 28, 2011 requesting the application be summarily dismissed as successive and barred by the statute of limitations. In a Conditional Order dated March 29, 2011, the Honorable Doyet A. Early, III, found that the application should be dismissed based on the statute of limitations and successiveness; Applicant was given twenty days in which to respond. After receiving no response from Applicant, Judge Early signed a Final Order dismissing the application on July 6, 2011 and entered on July 12, 2011. The Applicant did not appeal the denial of his third application for post-conviction relief.

## **II. ALLEGATIONS**

In his *fourth* and current application, Applicant alleges that he is being held in custody unlawfully based on the following allegations:

1. "Applicant is entitled to a new trial based upon the after-discovered evidence of his actual innocence wherein another individual admitted to commission of the crime for which Applicant was convicted."
  - a. "On or about September 27, 2011, an individual sent an email to another member of Applicant's family in which that person admitted to the murder of

Applicant's mother and that Applicant did not commit the crimes. Applicant was contacted and received this information in February 2012."

"The email and affidavit(s) or deposition(s) of the person receiving the email and law enforcement authorities receiving the information to South Carolina authorities will be presented at the evidentiary hearing."

"This evidence would change the result if a new hearing was held; it has been discovered within the past one (1) year; could not have been discovered before trial or the first post-conviction proceeding by exercise of due diligence; is material to the issue of guilt or innocence; and is not merely cumulative or impeaching. It is more likely than not no reasonable juror would have found Applicant guilty beyond a reasonable doubt."

### III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). The Uniform Post-Conviction Relief Act states that a person may institute a post-conviction relief action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(4). If the applicant contends there is evidence of material fact not previously presented, the post-conviction relief application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(c). "The granting of a new trial because of after-discovered evidence is not favored." State v. Irvin, 270 S.C. 539, 545, 243 S.E.2d 195, 197-98 (1978).

In order for an Applicant to obtain a new trial on the basis of newly discovered evidence, the party requesting the new trial must show that the evidence (1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by

the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and, (5) Is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983).

"Evidence, not known to accused at his trial, which will tend to prove that the crime of which he has been convicted was committed by another person, may be ground for a new trial. A new trial on this ground rests in the sound discretion of the trial court, and depends largely on the credibility of the new evidence. Where the newly discovered evidence is incredible and improbable under all the circumstances, the motion will be denied. ' . . . ; and ordinarily accused may not claim a new trial to produce evidence of such a confession where it was known to him prior to his conviction, or where he failed to exercise ordinary diligence to procure the testimony of the alleged confessor.'" State v. Fowler, 264 S.C. 149, 155-56, 213 S.E.2d 447, 450-51 (1975) (citations omitted).

#### IV. SUMMARY OF RELEVANT TESTIMONY

At the evidentiary hearing, Applicant presented testimony from witness Darryl Williams. Mr. Williams testified that Ms. Marcella Hooker was his family member and he has known her almost all his life. He stated that they are cousins and he has known her for 45 years. He stated that he has not seen or talked to her in several years. He testified that the last time he recalled speaking to her was on Facebook about ten years ago.

Mr. Williams testified that he recalled meeting with SLED to discuss a Facebook conversation he had with Marcella Hooker. He said that the conversation took place several years ago, so he does not remember exactly what he said in the conversation.

Mr. Williams testified that he and Applicant grew up together. He stated that they are cousins and they used to see each other at least five days a week. He testified that he did not have

much money growing up, so Applicant's mother, Pat, the Victim in this case, took care of him. He stated that the Victim was like a mother to him and his family.

Mr. Williams explained that he testified for the State at Applicant's trial in 1999 about how he saw Applicant on the two days in question. He testified that he borrowed the Victim's car the night of the incident and he returned it the next morning to his uncle, William Nimmons, who is now deceased. He stated that he was working at Piggly Wiggly at the time and needed to borrow her car. He stated that he was alone and did not have any drug-dealing friends with him.

Mr. Williams testified that in September of 2011, he was working two jobs; he worked at Piggly Wiggly, and he also worked at a residence hall supervising college students. He stated that he had a Facebook conversation with Marcella Hooker while he was at work at the residence hall. He stated that he was trying to pay attention at work and type at the same time, and he was distracted by his kids. In this Facebook message that Applicant presented, Mr. Williams wrote "I did kill Pat." Mr. Williams testified that he did recall writing this line, but he remembered reviewing this statement when he met with SLED and gave a voluntary statement. Mr. Williams testified that he meant to write "I did not kill Pat," in this Facebook message. He testified that in the last line of the Facebook chat, he wrote "My bad 'cause the computer acting up." He stated that there was a chance that the internet went down while he was trying to type his message, which is why he might have written this. Mr. Williams agreed that he did not mention the computer problems to SLED, but he did testify about it at the deposition, and the Facebook message said that the computer was acting up.

Mr. Williams testified that he did not recall if he "unfriended" Marcelle Hooker on Facebook, but he does not know if they are still "friends" on Facebook. He stated that he no longer communicates with her. He stated that Marcelle was trying to cause problems in his life

and he did not want to be friends with her anymore. He testified that she was trying to stir up something that he did not do. Mr. Williams testified that he knew he made a mistake when he typed an error in the Facebook message because one year after he sent it, SLED came to investigate him. He stated that he stopped speaking to Marcella when he found out that she told SLED about their conversation.

Mr. Williams testified that he did not kill the Victim. He stated that he makes mistakes on Facebook all the time, but when this mistake came to his attention, he corrected it by telling SLED it was not true. He stated that he never told SLED, the Solicitor's Office, or Applicant that he killed the Victim. He stated that he has always told the truth in all of his testimony and communications.

## V. ARGUMENT

### CREDIBILITY

This Court should make a finding of credibility on the witness presented at the evidentiary hearing. Mr. Williams's testimony was very credible and persuasive. He testified at the trial in 1999, he gave a statement to SLED, he was deposed by PCR Counsel in this case, and he testified at the evidentiary hearing. All of this testimony was consistent. Mr. Williams never changed his story and consistently recalled the same facts from the day of the murder. At the evidentiary hearing, Mr. Williams was represented by Breen R. Stevens, Esquire, of the Orangeburg Public Defender's Office. Mr. Williams was thoroughly advised of his rights and of the risks of perjury before he testified at the evidentiary hearing. He was aware of his constitutional right to remain silent to avoid self-incrimination. Mr. Williams chose to testify at the hearing and gave testimony that was consistent to his prior statements. Therefore, this Court should make a finding that Mr. Williams was a credible and reliable witness.

Because Mr. Williams is a credible and reliable witness, and because he directly and consistently disputed the "newly discovered evidence" presented at the evidentiary hearing, this Court should find that the "newly discovered evidence" is not credible. 'The credibility of newly-discovered evidence offered in support of a motion for new trial is a matter for determination by the circuit judge to whom it is offered. In him...resides the power to weigh such evidence; and his judgment thereabout will not be disturbed except for error of law or abuse of discretion. State v. Morrison, 246 S.C. 575, 579, 145 S.E.2d 15, 17 (1965). Mr. Williams made it clear in his testimony that the words he typed were in error and that he did not kill the Victim in this case. Therefore, this Court should make a finding that this new "evidence" is not credible.

Fowler held that a motion for a new trial on the ground of newly discovered evidence rests in the sound discretion of the trial court, and depends largely on the credibility of the new evidence. Where the newly discovered evidence is incredible and improbable under all the circumstances, the motion will be denied. Since the "evidence" is incredible and improbable, this Court should deny post-conviction relief.

#### NEWLY DISCOVERED EVIDENCE

Applicant alleges that a Facebook conversation between Darryl Williams and Marcelle Hooker is newly discovered evidence that entitles Applicant to a new trial. This allegation is meritless.

As noted above, a party requesting a new trial based on after-discovered evidence must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and,

(5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983). Each of these factors are addressed below.

(1) Prejudice

The Facebook message conversation between Darryl Williams and Marcelle Hooker would change the outcome of a new trial. While Applicant alleges that this conversation is proof of Mr. Williams confessing his alleged involvement in this murder, this theory is weak at best and a jury would almost certainly disregard it as untrue.

Mr. Williams testified at the evidentiary hearing, in his voluntary statement to SLED, and in the PCR deposition that he did not mean to write "I did kill Pat" in the Facebook message. He consistently testified that it was a typographical error, and that he meant to say "I did not kill Pat." He credibly testified that he did not kill the Victim. He never told any member of SLED, the Solicitor's Office, or the Applicant that he killed the Victim.

Furthermore, this Facebook message is not sufficient to qualify as evidence that could change the outcome of Applicant's trial. In order to prove third-party guilt, Applicant would have to present evidence that meets the third-party guilt standard layed out in State v. Gregory, 198 S.C. 98, 16 S.E.2d 532 (1941):

[T]he evidence offered by accused as to the commission of the crime by another person must be limited to such facts as are inconsistent with his own guilt, and to such facts as raise a reasonable inference or presumption as to his own innocence; evidence which can have (no) other effect than to cast a bare suspicion upon another, or to raise a conjectural inference as to the commission of the crime by another, is not admissible.... But before such testimony can be received, there must be such proof of connection with it, such a train of facts or circumstances, as tends clearly to point out such other person as the guilty party. Remote acts, disconnected and outside the crime itself, cannot be separately proved for such a purpose.

Gregory at 104-05, 16 S.E.2d at 534-35. The "evidence" presented in this action for post-conviction relief clearly has no value other than to cast a bare suspicion upon Mr. Williams. Mr. Williams never admitted any involvement in the murder or confessed to killing the Victim.

Turning to the contents of the Facebook conversation, it is clear that, when read in the context of the entire conversation, Mr. Williams's testimony that he meant to type "I did not kill Pat" makes sense. The conversation apparently begins with Ms. Hooker stating that Applicant had contacted her. Williams then responded "he did what he say." When read in the context of normal conversation, and considering the informality of Facebook and Williams's testimony that he was distracted by his work and his kids while he typed this, it is reasonable to assume Williams was asking Hooker what he said when she spoke to him, like "What did he say?" The conversation continues:

|           |                                                                                               |
|-----------|-----------------------------------------------------------------------------------------------|
| Williams: | he did what he say                                                                            |
| Hooker:   | he asked how is everyone and said you testified against him for the state and asked for money |
| Williams: | i had to there was going to lock my ass up if i did not i told the true                       |
| Hooker:   | i told him sometimes we have to do what we have to do to get by                               |
| Williams: | i no<br>it hurt me to do it but i did<br>i did kill pat                                       |
| Hooker:   | boy take it with you                                                                          |
| Williams: | my bad cuz my computer acting up<br>i holla at u later got 2 do some work im at work no       |

When looking at the context of the conversation, it is clear that Williams feels bad about testifying against Applicant at trial because they were such close cousins. Applicant reads this as Williams admitting that he felt bad about killing Pat, but it is more reasonable to argue that his comment was in response to Applicant being upset that Williams testified against him at trial. Williams wrote in the conversation that he told the truth ("I told the true") when he testified at

trial. These statements by Williams are not a confession, and his testimony that he meant to type "I did not kill Pat" is credible.

Finally, this Facebook "confession" which is disputed by the author likely would not counter the amount of the State's evidence against Applicant. Applicant alleges that if law enforcement had this evidence before the trial, it would have changed their investigation and thus changed the jury's verdict at trial. This standard is incorrect. The proper standard is whether the jury would have found Applicant not guilty if this evidence were presented at trial, along with the other evidence offered by the State against Applicant. Respondent submits that this evidence would not have changed the outcome of the trial, and a new trial should not be granted.

(2) Discovered Since Trial

Respondent does not dispute that this Facebook message, which was written in 2011, must have been discovered since the trial took place in 1999.

(3) Could not have been discovered before Trial

While this specific Facebook conversation could not have been discovered before the trial because it did not happen until 2011, if there were any evidence showing that Williams, not Applicant, murdered the Victim, it likely would have been and should have been discovered before the trial. Williams testified at the trial. He was investigated and interviewed by the State in preparation for Applicant's trial. Williams was not a surprise witness that investigators did not know about or could not find. This is not new DNA evidence proving that Applicant could not possibly have committed the crime. This is simply a typographical error on a Facebook message by a close friend and family member years after the trial took place. Respondent submits that if there were any truth to this allegation, Applicant would have known about it before the trial.

(4) Material to guilt or innocence

While the evidence presented is material to the guilt or innocence of the *witness*, Mr. Williams, it is not necessarily material to Applicant's guilt. Even if, hypothetically speaking, Mr. Williams did confess that he murdered the Victim, it does not prove that Applicant was innocent. It is possible that both of them worked together to kill the Victim and they are both equally guilty. Any suspicion that Applicant casts on Mr. Williams does not automatically counteract all evidence against himself. Therefore, Respondent submits that this evidence is not material to the issue of *Applicant's* guilt.

(5) Merely Cumulative or Impeaching

This evidence does not meet the standard for newly discovered evidence because it is merely impeaching. The only way that this Facebook conversation could have been presented at trial is if it were used to impeach the credibility of Darryl Williams when he testified for the State. It does not rise to the standard of a third-party guilt defense, and thus it would only be merely impeaching.

In conclusion, Respondent submits that Applicant has failed to meet each of the five prongs of the test for newly discovered evidence as laid out in Hayden. Therefore, his allegations should be denied and dismissed with prejudice.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court should find that the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

## VI. CONCLUSION

Based on all the foregoing, Respondent submits that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post-conviction relief should be denied and dismissed with prejudice.

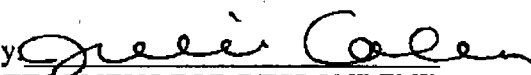
Respectfully submitted,

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By   
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February 2, 2017

STATE OF SOUTH CAROLINA )  
COUNTY OF BAMBERG )

IN THE COURT OF COMMON PLEAS

Juan Nimmons, 256828, )  
Applicant, )  
v. )  
State of South Carolina, )  
Respondent. )

Case No.: 2012-CP-05-0131

**APPLICANT'S CLOSING MEMORANDUM  
IN SUPPORT OF A NEW TRIAL**

JAMES D. HARRIS  
CLERK OF COURT  
BAMBERG, SC

FILED  
BAMBERG COUNTY  
2017 FEB - 7 PM 4:18

An evidentiary hearing in this matter was held on September 30, 2016 before the Honorable Edgar Dickson. At the hearing, Applicant called Darryl Williams to testify regarding his knowledge of the circumstances surrounding the death of Zola "Pat" Robinson and, more specifically, to testify about a Facebook conversation he engaged in with Marcella Curry-Hooker in which Williams made statements that amounted to a confession of the murder of Ms. Robinson. Based on Williams' testimony at the evidentiary hearing and the evidence before the Court, Applicant should be granted a new trial.

An applicant requesting a new trial based on after-discovered evidence must show that the evidence:

(1) is such as would probably change the result if a new trial was had; (2) has been discovered since the trial; (3) could not by the exercise of due diligence have been discovered before the trial; (4) is material to the issue of guilt or innocence; and, (5) is not merely cumulative or impeaching. *Hayden v. State*, 278 S.C. 610, 611-12, 299 S.E.2d 854, 855 (1983).

Applicant contends that Williams' testimony satisfies the requirements for granting a new trial under the standard set forth in *Hayden*. Williams' testified he

engaged in a Facebook conversation with his cousin, Marcella Curry-Hooker, on September 27, 2011, a copy of which was entered into evidence and attached as Exhibit A. In this conversation, Williams stated, "It hurt me to do it but I did. I did kill Pat." While Williams testified that this incriminating statement was a typographical error, his explanation is not credible when considered in the context of the conversation, his statements and actions immediately after the confession, and more broadly, his actions during the hours leading up to and after the murder of Zola "Pat" Robinson.

Williams' confession was a spontaneous statement. It was not made in response to a question asking if he was responsible for the death Zola "Pat" Robinson. Rather, it was made after Ms. Curry-Hooker, whom Williams has known since they were children, described a conversation that she had had with Juan Nimmons. Although Williams testified at the hearing that the statement, "I did kill Pat," was a mistake, important information about the accuracy and credibility of the statement can be gleaned from reviewing the context in which it was made.

Ms. Curry-Hooker responded to Williams' confession by stating, "boy take it with you." Williams's responded, "my bad cuz my computer acting up." Williams testified that he did not understand what Ms. Curry-Hooker meant when she stated, "boy take it with you." The only logical explanation of the meaning is that he should keep this information to himself – "take it with" him to the grave. Despite claiming not know the meaning of Ms. Curry-Hooker's statement, Williams responded that his computer was acting up in an attempt to explain away the statement. This implies that just as he was writing the statement "I did kill Pat," his computer acted up and caused the error (See deposition transcript of Darryl Williams dated 10/16/2015 page 42, line 7 – page 47, line

8 (Exhibit B)). He never wrote that he had made a mistake. He never wrote that he had left out a word. He never corrected the misstatement. He further testified that he did not even realize that he had made the mistake until months later, but he still offered a contemporaneous explanation for the statement. These two positions – attempting to retract his confession by blaming the statement on his computer acting up and stating that he was unaware that he had made a mistake – are incompatible. The fact that he offered an explanation indicates that he knew he had opened the door, the explanation that his computer acted up was his hasty attempt to close it. Other than blaming the statement on the computer malfunctioning, the only action that Mr. Williams' took after writing, "I did kill Pat," was to unfriend Marcella Curry-Hooker on Facebook and he has not communicated with her since.

The confession must be viewed in the context with other undisputed facts in the case. First, Darryl Williams was the last person in possession of the victim's vehicle. He testified that he returned the car to his Uncle, William Nimmons, at approximately 7:00 a.m. on August 7, 1998, the same morning Ms. Robinson was found murdered in her trailer. Second, Darryl Williams was close to Ms. Robinson. He described her like a mother to him. He was familiar with her routine, her habits, and he even knew her work schedule – he testified during the original trial in March 1999 that he knew that she needed to be at work at 6:00 a.m. on the morning he returned her car to his Uncle. (See Trial transcript page 148, lines 6-8 (Exhibit C)). Despite knowing that she would be unable to go to work without her car, he parked the car in front of his Uncle's trailer, gave him the keys, and left. Mr. Williams has provided a number of different reasons for why did not simply return the car to Ms. Robinson: he wanted his Uncle to know what

was going on, his Uncle was already outside, and that he was scared of Juan Nimmons. During the trial of this case, he offered no reason for returning the car to his Uncle rather than Ms. Robinson and he never mentioned being scared of Juan Nimmons. In contrast, he testified that he had known Mr. Nimmons since birth and spent time with him almost every day.

Williams' written confession on September 27, 2011, may be the only reliable piece of evidence that he provided during the evidentiary hearing. His testimony at the evidentiary hearing significantly differed from his testimony during Juan Nimmons' trial in March 1999 and it differed from his deposition testimony on October 16, 2015. He was not a credible witness. The only statement that has not changed, that he cannot change, is the written confession he made to Marcella Curry-Hooker. Williams' statements and actions after confessing to the murder of Zola "Pat" Robinson (claiming to not understand what "boy take it with you" meant, blaming the statement, "I did kill Pat," on his computer acting up, stating that he was not aware that he had made a mistake in the conversation, and unfriending Marcella Curry-Hooker immediately after the conversation) indicate that it was not a typographical error. These facts all lead to one conclusion: it was a confession.

The confession combined with Mr. Williams' actions on the morning of August 7, 1998 -- returning the car to his Uncle rather than Ms. Robinson -- are enough to cast a large, dark cloud of suspicion on him for the murder of Zola "Pat" Robinson. At trial, law enforcement admitted that Juan Nimmons was the first and only suspect. (See Trial transcript page 73, line 15 -- page 74, line 2 (Exhibit D)). If law enforcement had this

new evidence the investigation and the trial would have certainly changed and, more importantly, the verdict probably would have changed as well.

At the time of the murder, both Darryl Williams and Juan Nimmons were in the immediate vicinity of the victim's home throughout the night of August 6, 1998 and into the early morning hours of August 7, 1998. They were both using drugs heavily and were buying drugs from the same dealers on credit. They both needed money to supply their drug habits. They both had the same motive for robbing and killing Zola "Pat" Robinson. They both had the same opportunity to rob and kill her. They both should have been suspects. And now they have both confessed.

This new evidence meets the standards in *Hayden* to grant Juan Nimmons a new trial. Specifically, under the five-prong analysis of *Hayden*, first, this is the type of evidence that would probably result in a not guilty verdict. Mr. Nimmons' confession was the primary evidence used to convict him -- there was no DNA evidence and no fingerprint evidence introduced at the trial. Despite the horrific injuries the victim sustained, causing blood to be splattered all over the inside of the trailer, there was no physical evidence that connected Juan Nimmons to the murder of Zola "Pat" Robinson. Under the second and third prongs, the Facebook conversation was not discovered until after the trial and could not have been discovered during the trial because it did not yet exist. The fourth and fifth prongs under *Hayden* are also satisfied. Evidence implicating an alternative suspect, especially in light of no physical evidence existing to tie Nimmons to the crime, is material to Nimmons's innocence and since there was no such evidence offered at trial, therefore it is not cumulative or merely impeaching. A second confession from someone that had a close relationship with the victim and had the same opportunity

and motive to commit the crime is precisely the type of evidence for which the grant of a new trial is required.

Based on the new evidence presented at the hearing and all of the evidence before the Court, Applicant respectfully requests the Court grant a new trial.

Respectfully submitted,



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January 30, 2017

STATE OF SOUTH CAROLINA  
COUNTY OF BAMBERG

FILED  
BAMBERG COUNTY  
2017 MAR 24 AM 9:34

IN THE COURT OF COMMON PLEAS  
FOR THE SECOND JUDICIAL CIRCUIT

Juan M. Nimmons,

Applicant,

vs.

State of South Carolina,

Respondent.

JAMES B. NIER  
CLERK OF COURT  
BAMBERG, SC

Case No.: 2012-CP-05-00131

**ORDER DENYING  
POST-CONVICTION RELIEF**

This matter comes before the Court by way of a post-conviction relief ("PCR") application filed on July 17, 2012. An evidentiary hearing was convened before this Court on September 30, 2016, at the Orangeburg County Courthouse. After due deliberation, review of the motions and supporting documents, and hearing arguments on behalf each party, for the reasons stated below, this court denies Defendant's motion.

**PROCEDURAL HISTORY**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Bamberg County. Applicant was indicted at the March 1999 term of the Bamberg County Grand Jury for Murder (1999-GS-05-0028) and Armed Robbery (1999-GS-05-0029). He was represented on both charges by Joshua Koger, Esquire. Applicant proceeded to a jury trial and was convicted on both charges. On March 10, 1999, Applicant was sentenced by the Honorable Gary E. Clary to life without parole for Murder and to a consecutive term of thirty (30) years imprisonment for Armed Robbery.

A notice of appeal was filed and an appeal perfected. Following an Anders review, the appeal was dismissed. State v. Nimmons, Op. No. 2002-MO-051 (S.C. Sup. Ct. filed June 13, 2002). Applicant's Petition for Rehearing was denied, and the Remittitur was sent on August 7, 2002.

1/11 

**2003-CP-05-00068**

Applicant subsequently filed a PCR application on May 1, 2003 (2003-CP-05-00068), wherein Applicant raised the following issues:

1. Ineffective assistance of counsel:
  - a. Failure to submit notice of alibi defense and present alibi witnesses;
  - b. Failure to object to solicitor's closing argument.
  - c. Failure to object to sentence;
  - d. Failure to request a Jackson v. Denno hearing;
  - e. Failure to subpoena Rowland Dowling;
  - f. Failure to move for directed verdict on the charge of Armed Robbery;
  - g. Failure to request a jury charge on alibi;
  - h. Failure to object to solicitor's "pitting of witnesses";
  - i. "[F]ailing to motion to reveal Rule 404(b), S.C.R.Evid., State v. Lyle, evidence";
  - j. Failure to move for a continuance;
  - k. "[F]ailing to subpoena the coroner/toxicologist as there was not time of death, which could have changed the outcome of proceedings because witnesses observed different individuals entering victim's residence this particular night";
2. Ineffective assistance of appellate counsel;
3. The Court lacked subject matter jurisdiction on Armed Robbery charge.

The State made its Return on September 11, 2003. An evidentiary hearing was convened on August 8, 2007, before the Honorable J. Michael Baxley. Applicant was present and represented by Sherry Stoney, Esquire. Judge Baxley dismissed the application with prejudice by order dated September 18, 2007. The South Carolina Supreme Court denied Applicant's Writ of Certiorari on September 3, 2009. The Remittitur was send on September 21, 2009.

**2009-CP-05-00200**

Applicant filed his second PCR application on October 2, 2009 (2009-CP-05-00200). In his application, Applicant set forth the following grounds for relief:

2/11 

1. "Was Petitioner denied his one bite of the apple when PCR counsel failed to [e]nsure that all grounds for relief were raised in Petitioner's prior PCR application and addressed at Petitioner's PCR hearing?"
2. "Was Petitioner denied due process of law and equal protection when trial counsel and PCR counsel failed to challenge the defects in the indictments that allowed Petitioner to be tried and convicted on defective instruments that have unduly prejudiced Petitioner and denied him of his constitutional rights?"
3. "Was Petitioner denied due process of law and equal protection when counsel failed to raise the issue of trial counsel conceding Petitioner's guilt to the jury?"
4. "Was PCR counsel ineffective for failing to raise trial counsel's failure to ask the court that the sentences that were handed down be run concurrent as mandated by S.C. Code Ann. 17-25-50?"

In a Conditional Order dated May 24, 2010, the Honorable Doyet A. Early III found that the application should be dismissed based on the statute of limitations and successiveness; Applicant was given twenty (20) days in which to respond. After consideration of Applicant's responses to the Conditional Order, a Final Order of Dismissal was signed by Judge Early on August 13, 2010, and filed August 17, 2010. In an order dated September 28, 2010, the Supreme Court dismissed the matter for failure to show an arguable basis why the determination by the lower court was improper pursuant to Rule 243(c), SCACR. The Remittitur was sent on October 15, 2010.

**2010-CP-05-00205**

Applicant filed a third PCR application on October 7, 2010 (2010-CP-05-00205). In this application, Applicant set forth the following grounds for relief:

1. Ineffective assistance of appellate counsel:
  - a. "Counsel failed to raise meritorious issues."
  - b. "Counsel acted under a conflict of interest."
  - c. "Counsel failed to show-up or attend the PCR hearing."

Respondent made its Return and Motion to Dismiss on March 28, 2011, requesting the application be summarily dismissed as successive and barred by the statute of limitations. In a Conditional Order dated March 29, 2011, the Honorable Doyet A. Early III found that the application should

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be dismissed based on the statute of limitations and successiveness; Applicant was given twenty (20) days in which to respond. After receiving no response from Applicant, Judge Early signed a Final Order of Dismissal dismissing the application on July 6, 2011. Applicant did not appeal the denial of his third application for post-conviction relief.

### **Current Allegations**

In his fourth and current application, Applicant alleges that he is being held in custody unlawfully based on the following allegations:

1. "Applicant is entitled to a new trial based upon the after-discovered evidence of his actual innocence wherein another individual admitted to commission of the crime for which Applicant was convicted."
  - a. "On or about September 27, 2011, an individual sent an email to another member of Applicant's family in which that person admitted to the murder of Applicant's mother and that Applicant did not commit the crimes. Applicant was contacted and received this information in February 2012.

Respondent submitted its Return and Motion to Dismiss on October 8, 2012. A Conditional Order of Dismissal was signed by the Honorable Doyet A. Early III on October 11, 2012, and filed on October 17, 2012, provisionally denying and dismissing the PCR application, but allowing Applicant twenty (20) days to set forth specific reasons why this dismissal should not become final. Applicant filed a response asking Judge Early to recuse himself due to a conflict of interest, to which Judge Early recused himself from the case. Subsequently, the Honorable Clifton Newman granted Applicant's Discovery Motion and ordered an evidentiary hearing.

An evidentiary hearing was convened before this Court on September 30, 2016, at the Orangeburg County Courthouse. Both parties waived venue to allow the hearing outside of the Second Judicial Circuit. Applicant was present at the hearing and was represented by Janek

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Kazmierski, Esquire. Respondent was represented by Assistant Attorney General Julie A. Coleman.

At the evidentiary hearing, Applicant presented testimony from Darryl Williams ("Williams"). The crux of Williams's testimony at the evidentiary hearing concerned a Facebook Messenger conversation that he had with Marcella Curry-Hooker ("Curry-Hooker") concerning Applicant; however, some context is necessary before delving into that conversation.

Williams is a cousin of Applicant, and the two grew up together. Williams testified that he and Applicant saw each other at least five (5) days per week. Additionally, he stated that the victim, Zola "Pat" Robinson ("Pat") was like a mother to him and his family. Despite this, Williams testified against Applicant at Applicant's trial in 1999. During that testimony, Williams testified that he saw Applicant the night of the incident, that Applicant left a social gathering in which Williams attended, and that Applicant came back later and had money with him that Williams had not seen before. He also testified that he had borrowed Pat's car the night of the incident and he returned it the next morning to his uncle, William Nimmons, who is now deceased. He stated that he was working at Piggly Wiggly at the time and needed to borrow her car. Williams was the last person in possession of Pat's vehicle before she was found murdered in her trailer that morning. Ultimately, Applicant was convicted, namely due to a voluntary statement that he gave to law enforcement in which he admitted to beating his mother with a hammer and taking one-hundred and twenty dollars (\$120.00) from her person.

At the evidentiary hearing in September 2016, Williams recalled a Facebook conversation that he had with Curry-Hooker in 2011. Curry-Hooker was a family member of Williams, and he had known her all his life. It was not unusual for them to speak with each other via Facebook, although he admitted that he had not spoken to her in several years. The conversation occurred

while Williams was working as a residence hall supervisor at Voorhes College. While using a computer supplied by Voorhes College, Williams and Curry-Hooker began discussing Applicant and his case. Williams stated that he was trying to pay attention to work and type at the same time, and he was distracted by the kids. The conversation progressed as follows:

**Williams:** "he did what he say"

**Curry-Hooker:** "he asked how is everyone and said you testified against him for the state and asked for money"

**Williams:** "i had to there was going to lock my ass up to if i did not"  
"i told the true"

**Curry-Hooker:** "i told him sometimes we have to do what we have to do to get by"

**Williams:** "i no"  
"it hurt me to do it but i did"  
"i did kill pat"

**Curry-Hooker:** "boy take it with you"

**Williams:** "my bad cuz my computer acting up"  
"i holla at u later got 2 do some work im at work no"

Curry-Hooker ultimately reported this conversation to the authorities, prompting SLED to conduct an investigation.

Williams testified that he did not recall writing, "i did kill pat," but he remembered reviewing this statement when he met with SLED and gave a voluntary statement. He testified that he did not mean to write that in his Facebook message. He stated that there was a chance his computer was acting up, which caused him to write this. This would also explain why he stated, "my bad cuz my computer acting up." In any case, Williams testified that he did not kill the victim. He also stated that he makes mistakes on Facebook all the time, but when this mistake came to his

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attention, he corrected it by telling SLED that it was not true. Williams further testified that he has always told the truth in all of his testimony.

### DISCUSSION

In a PCR action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442 (1985). The Uniform Post-Conviction Relief Act provides that a person may institute a PCR action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(4). If the applicant contends there is evidence of a material fact not previously presented, the PCR application must be filed within one year after the date of actual discovery of the facts by the application or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. § 17-27-45(c). "The granting of a new trial because of after-discovered evidence is not favored." State v. Irvin, 270 S.C. 539, 545 (1978).

In order for Applicant to obtain a new trial on the basis of newly discovered evidence, the party requesting the new trial must show that the evidence: (1) is such as would probably change the result if a new trial was had; (2) has been discovered since the trial; (3) could not by the exercise of due diligence have been discovered before the trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching. E.g., Hayden v. State, 278 S.C. 610, 611-12 (1983). The following general principles are applicable:

Evidence, not known to [the] accused at his trial, which will tend to prove that the crime of which he has been convicted was committed by another person, may be a ground for a new trial. A new trial on this ground rests in the sound discretion of the trial court, and depends largely on the credibility of the new evidence. Where newly discovered evidence is incredible and improbable under all the circumstances, the motion will be denied.

State v. Fowler, 264 S.C. 149, 155–56 (1975) (quoting 24 C.J.S. Criminal Law § 1454c).

- A. As an initial matter, this Court finds that Williams's testimony was credible and that the purported "newly discovered evidence" was incredible and improbable under the totality of the circumstances.

In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment. State v. Porter, 269 S.C. 618, 621 (1977) (noting that the determination of whether new evidence is credible for purposes of a new trial motion rests with the trial court); see also State v. Deese, 266 S.C. 534, 538 (1976) (stating that the trial court is tasked with assessing the new evidence in a motion for a new trial); State v. Pierce, 263 S.C. 23, 33 (1974) ("The credibility of newly-discovered evidence offered in support of a motion for a new trial is a matter for determination by the circuit court judge to whom it is offered. In him . . . resides the power to weigh such evidence; and his judgment thereabout will not be disturbed except for error of law or abuse of discretion."). However, the Court is sensitive to the notion that a mere finding of a witness's lack of credibility does not complete the analysis, because a witness may lack persuasive credibility and still create reasonable doubt. State v. Mercer, 381 S.C. 149, 170 (2009). This sensitivity forms part of the Court's consideration. Id.

Williams testified at Applicant's trial in 1999, gave a statement to SLED, was deposed by PCR counsel, and testified at the evidentiary hearing. All of this testimony was consistent. Williams never changed his story and consistently recalled the same facts from the day of the murder. Therefore, this Court finds that Williams was a credible and reliable witness. Furthermore, because Williams consistently and directly disputed the newly discovered evidence presented at the evidentiary hearing, this Court finds that the newly discovered evidence is not credible. Williams made it clear in his testimony that the words he typed were in error and that he did not

kill Pat. The newly discovered evidence offered by Applicant is incredible and improbable under the circumstances, lending this newly discovered evidence to carry little weight.

**B. In light of the above, the newly discovered evidence is not such as would probably change the result if a new trial was had and the evidence is merely cumulative or impeaching.**

As noted above, a party requesting a new trial based on newly discovered evidence must show that the evidence: (1) is such as would probably change the result if a new trial was had; (2) has been discovered since trial; (3) could not by the exercise of due diligence have been discovered before the trial; (4) is material to the issue of guilt or innocence; and (5) is not merely cumulative or impeaching. Hayden v. State, 278 S.C. 610, 611-12 (1983). While the newly discovered evidence arguably meets the standards delineated in subsections (2), (3), and (4) outlined above, the evidence would not change the result if a new trial was had and the evidence is merely cumulative or impeaching.

**1. The evidence would not change the result if a new trial was had.**

In order to show third-party guilt, Applicant would have to present evidence that meets the third-party guilt standard outlined in State v. Gregory, which states the following:

[T]he evidence offered by accused as to the commission of the crime by another must be limited to such facts as are inconsistent with his own guilt, and to such facts as raise a reasonable inference or presumption as to his own innocence; evidence which can have no other effect than to cast a bare suspicion upon another, or to raise a conjectural inference as to the commission of the crime by another, is not admissible. . . . But before such testimony can be received, there must be such proof of connection with it, such a train of facts or circumstances, as tends clearly to point out such other person as the guilty party. Remote acts, disconnected and outside the crime itself, cannot be separately proved for such a purpose.

198 S.C. 98, 104-05 (1941).

The evidence in this action for post-conviction relief has no value other than to cast a bare suspicion upon Williams. Williams never admitted to any involvement in the murder and never confessed to killing the victim. Rather, Williams's testimony that he meant to type "I did not kill Pat" is plausible. When read in the context of normal conversation, and considering the informality of Facebook, the fact that Williams said that his testimony in 1999 was the truth, and Williams's testimony that he was distracted by his work and kids while typing, it is reasonable to assume that Williams made a typographical error.

Furthermore, this Facebook "confession" which is disputed by the author likely would not counter the amount of the State's evidence against Applicant. Applicant alleges that if law enforcement had this evidence before the trial in 1999, it would have changed their investigation and thus changed the jury's verdict at trial. However, the proper standard is whether the jury would have found Applicant not guilty if this evidence were presented at trial, along with the other evidence offered by the State against Applicant. This Court finds that this evidence would not have changed the outcome of the trial, and a new trial should not be granted.

Accordingly, this Court finds that the evidence would not change the result if a new trial was had.

**2. The evidence is merely impeaching, and, therefore, is insufficient to warrant a new trial for Applicant.**

Evidence is "impeaching" so as to bar a new trial if it is outside the evidence already given and impeaches that evidence by attacking the character, the motives, the integrity, or the veracity of those who gave the evidence. Evatt v. Campbell, 234 S.C. 1, 13-14 (1959). The evidence produced by Applicant does not meet the standard for newly discovered evidence because it is merely impeaching. The evidence does not automatically counteract all evidence against Applicant; rather, such evidence would only be used to call into question the veracity of Williams's

testimony that he did not kill the victim. See Clark v. State, 315 S.C. 385, 388 (1993) (stating that a new trial based on "after discovered evidence" requires a showing that the evidence is material to a claim of actual guilt or innocence, and does more than merely impeach).

Accordingly, because the evidence presented by Applicant is merely impeaching, it does not meet the standard of newly discovered evidence that would warrant a new trial for Applicant.

### CONCLUSION

Therefore, for the reasons stated above, this Court orders that Applicant's application for post-conviction relief should be, and hereby is, DENIED and DISMISSED WITH PREJUDICE.

AND IT IS SO ORDERED.



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Edgar W. Dickson  
Presiding Judge, Second Judicial Circuit

March 10, 2017  
Orangeburg, South Carolina

1  
D.P.D. - Bell

ARREST WARRANT NUMBER

F 614512

ACTION OF GRAND JURY

*True Bell*

*Juan M. Nimmons*  
Foreperson of Grand Jury  
Date: *3/10/99*

VERDICT

*Guilty*

*Samuel C. Smith*  
Foreperson of Petit Jury

*3/10/99*

DOCKET NO. 99-GS-05-*29*

The State of South Carolina  
County of Bamberg

COURT OF GENERAL SESSIONS

March 8, TERM 1999

THE STATE  
vs.

JUAN M. NIMMONS

Indictment for

ARMED ROBBERY

SC Code: 16-11-0330(A)  
CDR Code: 0139  
Class FEL-A(V)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

DATE

STATE OF SOUTH CAROLINA)

COUNTY OF BAMBERG )

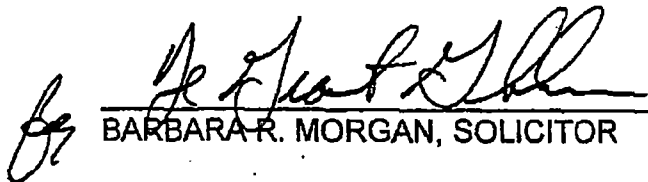
A TRUE COPY  
INDICTMENT

At a Court of General Sessions, convened on March 8, 1999 the Grand Jurors of Bamberg County present upon their oath:

ARMED ROBBERY

That JUAN M. NIMMONS did in Bamberg County on or about August 7, 1998, while armed with a deadly weapon, to wit: a hammer, feloniously take from the person or presence of Zola Robinson, by means of force or intimidation goods or monies of Zola Robinson, such goods or monies being described as follows: cash, all in violation of §16-11-330, Code of Laws of South Carolina, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
BARBARA R. MORGAN, SOLICITOR

**WITNESSES**

D.P.D. - Bell

**ARREST WARRANT NUMBER**

F 614511

**ACTION OF GRAND JURY***Juan Bell**Walter Hargis*  
Foreperson of Grand JuryDate: *3/1/99***VERDICT***Guilty**Samuel C. Smart 3/10/99*

Foreperson of Petit Jury

Date:

DOCKET NO. 99-GS-05-*28***The State of South Carolina**

County of Bamberg

**COURT OF GENERAL SESSIONS**

March 8, Term 1999

**THE STATE**

vs..

**JUAN M. NIMMONS**

Indictment for

**MURDER**

SC Code 16-3-10

CDR Code 116

Class FEL-EXM

After being fully advised as to my legal rights,  
I hereby waive presentment to the Grand  
Jury.

Defendant

I  
Hereby appear in my own proper person and  
plead guilty to the within indictment or to

Defendant

Witness:

DATE

STATE OF SOUTH CAROLINA )  
COUNTY OF BAMBERG )

A TRUE COPY  
INDICTMENT

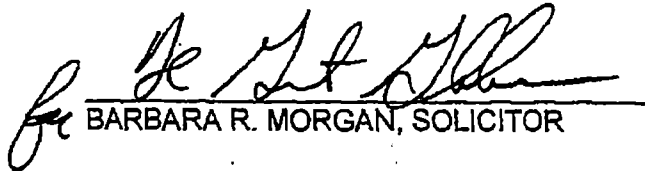
At a Court of General Sessions, convened on March 8, 1999 the

Grand Jurors of Bamberg County present upon their oath:

**MURDER**

That JUAN M. NIMMONS did in Bamberg County on or about August 7, 1998, with malice aforethought, kill one Zola Robinson by means of hitting her in the head with a hammer, and said victim died as a proximate result thereof, all in violation of Section 16-3-10, South Carolina Code of Laws, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

  
BARBARA R. MORGAN, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Bamberg

INDICTMENT/CASE#:

STATE

VS.

99 -GS- 05 - 29Juan Nimmons

AKA:

Butch

Race:

B

Sex:

M

DOB:

1

Age:

36

SSN:

DL#:

SID#:

GA 2328016X

AW#:

F 614512

Date of Offense:

8-7-98

S.C. Code § :

16-11-0330(A)

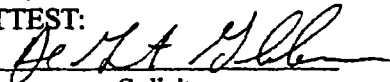
CDR Code #:

0111319

SENTENCE

☐ PLEA☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADSTO: Armed Robberyin violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0111319☐ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ 17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:



Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of thirty (30) days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with **probation** for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ The Defendant is to be given credit for \_\_\_\_\_ days/months jail time.☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 3/10/99 for Murder

## SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ \_\_\_\_\_ plus 20% fee \$ \_\_\_\_\_

Payment Terms:

☐ set by SCDPPPS

Recipient: \_\_\_\_\_

\*Fine: .....\$

§ 14-1-206 - Assessments 100%.....\$

§ 14-1-211 - Surcharge.....\$

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI).....\$

County (3%).....\$

TOTAL.....\$

Clerk of Court/Deputy Clerk \_\_\_\_\_

Court Reporter: \_\_\_\_\_

PTUP \_\_\_\_\_

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED \_\_\_\_\_

Attend Voc Rehab. or Job Corps \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling \_\_\_\_\_

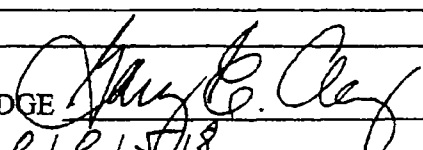
Random Drug/Alcohol Testing \_\_\_\_\_

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund.

Other: \_\_\_\_\_

PRESIDING JUDGE Judge Code: 01015018Sentence Date: 3/10/99

STATE OF SOUTH CAROLINA

COUNTY OF Bamberg

STATE

VS.

Juan NimmonsAKA: ButchRace: BSex: MDOB: 36Age: 36SSN: 1DL#: GA 2328016XSID#: GA 2328016X

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

99 -GS- 05 - 28A/W#: F 614511Date of Offense: 8-7-98S.C. Code § : 16-3-10CDR Code #: 011116

SENTENCE

☐ PLEA ☒ TRIALIn disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS TO: Murderin violation of § 16-3-10 of the S.C. Code of Laws, bearing CDR Code # 011116☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]  
Solicitor[Signature]  
Defendant[Signature]  
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of life without parole days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ The Defendant is to be given credit for \_\_\_\_\_ days/months jail time.☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 3/10/99 for Armed Robbery

## SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ \_\_\_\_\_ plus 20% fee \$ \_\_\_\_\_

Payment Terms: \_\_\_\_\_

☐ set by SCDPPPS \_\_\_\_\_

Recipient: \_\_\_\_\_

\*Fine: .....\$

§ 14-1-206 - Assessments 100%.....\$

§ 14-1-211 - Surcharge.....\$

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI).....\$

County (3%).....\$

TOTAL.....\$

Clerk of Court/Deputy Clerk \_\_\_\_\_

Court Reporter: \_\_\_\_\_

PTUP \_\_\_\_\_

\_\_\_\_\_ days/hours Public Service Employment

Obtain GED \_\_\_\_\_

Attend Voc Rehab. or Job Corps \_\_\_\_\_

May serve W/E beginning \_\_\_\_\_

Substance Abuse Counseling \_\_\_\_\_

Random Drug/Alcohol Testing \_\_\_\_\_

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_

\$ \_\_\_\_\_ paid to Public Defender Fund.

Other: \_\_\_\_\_

PRESIDING JUDGE [Signature]Judge Code: 010518Sentence Date: 3/10/99